



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were given to the tenant in person on July 08, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the landlord established a monetary claim due to unpaid rent?
- is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This tenancy started on May 01, 2008. Rent for this suite was \$2,400.00 per month which was due on the 1st of each month. This tenancy agreement started as a fixed term for one year and then reverted to a month to month agreement. The tenant paid a security deposit of \$1,200.00 on April 18, 2008.



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The landlord testifies that the tenant gave her verbal notice to end the tenancy on June 07, 2009 by telephone. The landlord testifies that she told the tenant he must give written notice to end the tenancy for July 01, 2009 to end the tenancy on August 01, 2009. The tenant moved from the rental suite on June 28, 2009. Before the tenant moved from the suite the landlord attempted to re-rent the suite to mitigate her loss and make it easier for the tenant to end the tenancy early. However the suite was not re-rented until August 01, 2009.

The landlord seeks rent for July, 2009 as the tenant did not give her written notice to end the tenancy. She also seeks to keep the tenants security deposit in partial payment of the outstanding rent.

The tenant testifies that he understood the landlord had accepted his verbal notice to end the tenancy. The tenant had lost his vision and could not write out a notice to end tenancy. The tenant testifies he had to move as he could no longer manage the steps with his loss of vision. When he told the landlord he would have to start looking for another place to rent she said that was fine just give her a months notice and she would start to advertise the suite. The tenant claims that before the landlord realised she could not re-rent the suite for July she was fine with his verbal notice. When the suite was not re-rented the landlord told the tenant he owed her for July's rent. The tenant disputes that he owes rent for July, 2009 as he believes the landlord accepted his verbal notice at the time.

Analysis

The *Residential Tenancy Act* section 52 states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,



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- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I accept the landlords' testimony that she asked the tenant to give written notice but she would try to re-rent the suite in the meantime to attempt to mitigate a loss for both parties. While I accept the tenant had difficulties writing with his loss of vision I do not accept that he could not have asked someone else to write a notice to end the tenancy on his behalf. Therefore, I uphold the landlords' application that the tenant did not give the correct notice of one month and did not give notice in an approved manner. I find therefore, the tenant does owes rent for July, 2009 and uphold the landlords application to keep the tenants security deposit in partial payment of the outstanding rent.

As the landlord has been successful with her application she is also entitled to recover the \$50.00 filing fee from the tenant. A Monetary Order has been issued for the following amount:

Outstanding rent for July , 2009	\$2,400.00
Subtotal	\$2,450.00
Less security deposit and accrued interest	(-\$1212.69)
Total amount due to the landlord	\$1,237.31

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,237.31**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant has provided his forwarding address at the hearing. This has been accepted as his new address.



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This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 21, 2009.

Dispute Resolution Officer