



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 the landlord's Application for Dispute Resolution to obtain a monetary order for unpaid rent

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary Order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 44, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Preliminary Issue

Upon review of the submitted documentary evidence, I found the tenant to be known to the landlord using a certain given name but that the copies of tenant's cheques submitted had the tenant listed under a different given name. The tenant testified that the name on the cheques is her legal name. I have amended the application to reflect this.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement and addendum signed by the parties on September 7, 2009 for a fixed term tenancy beginning on September 8, 2009 and ending on March 31, 2009 for a monthly rent of \$850.00 due on the 1st of the month;
- Copies of two cheques left by the tenant both with stop payments on them. One cheque in the amount of \$425.00 for a security deposit and one for \$150.00 for partial rent for September 2009;
- A summary of events regarding the signing of the tenancy agreement and subsequent events leading to the tenant not moving and end the tenancy; and
- A copy of a letter from the tenant to the landlord outlining that she would not be moving in and asking for a refund of the \$473.00 cash the tenant had paid for September 2009 rent.

In the evidence provided and by her testimony the landlord confirmed that she met with the tenant on September 4, 2009 to show her the rental unit. The landlord testified that on that date they viewed the rental unit and discussed the terms of the tenancy agreement; the tenant left a cheque in the amount of \$425.00 for a security deposit and agreed to meet on September 7, 2009 to sign a tenancy agreement.

The tenant's testimony is that her mother advised her that she had been told by the Residential Tenancy Branch that she had 24 hours after signing a Tenancy Agreement to break the agreement without penalty. The tenant further testified that she had been informed by her mother after she signed the agreement that her grandmother was ill and required someone to live with her. As a result she phoned and left a message for the landlord saying that she would not be moving in.

Both parties testified to further communication related to the end of the tenancy including an altercation between the landlord and the tenant's mother; emails regarding a possible settlement; and phone messages regarding potential new renters.

The landlord testified she was able to find tenants for the rental unit for November 1, 2009 as a result of advertising through various media including the local newspaper at a cost of \$45.00. The landlord is also claiming lost rent for the months of September and October 2009.

Analysis

Section 16 of the *Act* states that the obligations of a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. There is no provision that allows either party to a tenancy agreement to "break the contract" within 24 hours of signing a tenancy agreement.

Section 45 of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- a) Is not earlier than one month after the date the landlord receives the notice,
- b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- c) Is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Residential Tenancy Policy Guidelines state that where the tenant ends a tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

I find the tenant failed to comply with the *Act* in ending the tenancy by failing to meet the obligations required under a fixed term tenancy. I find the landlord took reasonable steps to mitigate loss of rental income and re-rented the rental unit as soon as possible.

Having found the above I further find the tenant is responsible for the agreed to pro-rated rent for September 2009 and for the full rent for October 2009. I also find the tenant is responsible for the additional costs the landlord faced for having to advertise the rental unit and for the filing fee for this application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,468.00** comprised of \$1473.00 rent owed; \$45.00 advertising and the \$50.00 fee paid by the Landlord for this application.

I order the landlord may deduct the rent for September 2009 already received in the amount of \$473.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$995.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: January 06, 2010.

Dispute Resolution Officer