



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application for a Monetary Order for recovery of damage or loss under the Act, regulations or tenancy agreement and the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party. The landlord confirmed the tenants' application and evidence were served upon her.

Issues(s) to be Decided

1. Have the tenants established an entitlement to compensation from the landlord?
2. Award of the filing fee.

Background and Evidence

Upon review of the evidence before me, including the undisputed verbal testimony, I make the following findings. The parties signed a tenancy agreement in November 2007. In accordance with the tenancy agreement, the tenants were required to pay rent of \$1,050.00 on the 1st day of every month. In addition to paying monthly rent, the landlord required the tenants to pay instalments until such time \$2,100.00 was paid for two months of "advance rent". The tenancy agreement signed by the parties required the tenants to provide two months of written notice to end tenancy. On August 30, 2009 the tenants personally gave the landlord written notice to end tenancy at the end of September 2009 rent. The tenants did not pay rent for September 2009 and one-half of the "advance rent" was applied for September 2009. The landlord returned the tenants'

security deposit to them but did not return the remainder of the advance rent paid to them.

In making this application, the tenants are seeking return \$1,050.00 for the remainder of the advance rent not returned to them.

The landlord submitted that the tenancy agreement signed by the parties clearly stipulates that the tenants were required to give two months of written notice to end tenancy and they did not provide sufficient notice in accordance with the terms of the tenancy agreement. The landlord explained that she and her husband travel a great deal due to business and two months of notice and the two months of advance rent was necessary for them to find suitable tenants. The landlord testified that the rental unit is still not rented as of today's date.

Analysis

Section 5 of the Act provides that the requirements of the Act cannot be avoided and parties to a tenancy agreement cannot contract out of the Act. Therefore, where a term of a tenancy agreement conflicts with a requirement of the Act, the term is not enforceable.

Section 26 of the Act provides for the rules about payment of rent. Rent must be paid when it is due under the tenancy agreement. I find the landlord's requirement that the tenants pay "advance rent" violates this section of the Act.

Section 45 of the Act provides for a tenant's notice to end tenancy. A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy at least one month after the date the landlord received the notice and on the last day in the month. I find the term of the tenancy agreement that required the tenants to give two month of rent to conflict with the Act and that term is not enforceable. Therefore, I find the tenant's gave

written notice to the landlord on August 30, 2009 and the tenant's obligation to pay rent ended September 30, 2009.

In light of the above findings, the tenants were not obligated to pay rent for October 2009 and they are entitled to recover \$1,050.00 of the "advance rent" paid to the landlord. I also award the filing fee to the tenants. The landlord is hereby ORDERED to pay the tenants \$1,100.00 forthwith.

Provided with the tenants' copy of this decision is a Monetary Order in the amount of \$1,100.00 for them to serve upon the landlord.

Conclusion

The tenants were successful in establishing a monetary claim of \$1,100.00 against the landlord and have been provided a Monetary Order in that amount.

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 22, 2010.

Dispute Resolution Officer