

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$1650.00. The applicant is also requesting an order that the respondent bear the \$50.00 cost of the filing fee that was paid for this application for dispute resolution; however the landlord has made arguments pursuant to jurisdiction and therefore I will deal with that matter first.

Background and Evidence

On July 5, 2009 the tenants signed an “application for tenancy and offered to rent residential premises” form, and in that form there is a clause that states if a tenant fails to enter into the tenancy agreement within 48 hours after the offer is accepted the applicant may be held liable for payment of the equivalent of one half months rent.

The landlord testified that:

- The landlords were willing to accept the applicant as a tenant and on July 7, 2009 sent him a tenancy agreement to sign however the tenant never signed the tenancy agreement and therefore the tenancy was never established.
- The landlords, on more than one occasion, verbally requested that the tenant return the signed tenancy agreement however the tenant refused to do so stating that he was not sure he was going to be able to take the tenancy.
- On July 27, 2009 a full 20 days after the tenancy agreement was sent, the tenant sent an e-mail stating that he may not be able to go ahead with this contract.
- Since the application for tenancy clearly stated that acceptance of the tenancy must be within 48 hours, and since the tenant, 20 days later, had still not accept the tenancy, the landlords came to the conclusion that the tenant was unlikely to enter into a tenancy agreement with them and therefore took steps to mitigate their loss and find a renter.
- At no time in any of the communication from the tenant did he ever state that he was accepting the tenancy, either verbally, or by e-mail, and since acceptance was required within 48 hours, no tenancy was ever established.

The landlord therefore believes that the residential tenancy branch has no jurisdiction over this matter.

The tenant testified that:

- Although he never did sign the tenancy agreement that was received from the landlord, the landlord did not inform him of the urgency to have it signed and returned and did not seem to make an issue of it.
- He did send an e-mail to the landlord stating that he was unsure whether he would be able to take the tenancy, however he never stated that he would not and since the landlord's e-mails indicated that he had been accepted as a tenant he assumed the tenancy would proceed.
- He did not recall the clause in the application to rent that stated acceptance must be within 48 hours, and the landlord made no mention of it in any of the e-mails.
- There were no telephone conversations with the landlord and the landlord never verbally requested that the tenancy agreement be signed and returned.

The tenant therefore believes that a tenancy was established and the Residential Tenancy Branch does have jurisdiction over this matter.

Analysis

It is my decision that the applicant has not met the burden of proving that a tenancy was ever established in this case.

In the “application for tenancy and offer to rent residential premises” it clearly states that acceptance of the tenancy agreement must be within 48 hours after the offer is accepted, and in this case that did not happen.

The tenant claims that he did not realize it was urgent to sign the tenancy agreement and return it, however in the e-mail to which the tenancy agreement was attached it states “please initial on all pages at bottom right & full signature on page 6 and on form eight and fax or mail back all pages to me at your soonest convenience”. The word **soonest** clearly indicates urgency.

A full 20 days after the offer to rent was accepted the tenant sent an e-mail stating that he was still not sure whether he would be able to rent, and therefore it is my finding that it was reasonable for the landlords to then attempt to find a different renter for the unit.

The tenant argued that the e-mails from the landlord state that a tenancy has been established and therefore the Residential Tenancy Act does have jurisdiction over this matter, however it is my decision that is not the case. Acceptance of a tenancy agreement must be made by both sides before tenancy is established, and just because one side says that a tenancy has been established, does not make it so. Had the landlord attempted to claim that the Residential Tenancy Branch had jurisdiction based on these e-mails, I would still have declined jurisdiction.

For an agreement to be finalized there must be offer and acceptance, and in this case although there was offer from the landlord for a tenancy agreement there is never any indication that it was accepted by the tenant.

Conclusion

I declined jurisdiction over this matter, as no residential tenancy has been established.

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: March 02, 2010.

Dispute Resolution Officer