

DECISION

Dispute Codes MNR

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to the other party's submissions.

Issues(s) to be Decided

Has the landlord established an entitlement to unpaid rent?

Background and Evidence

The parties provided undisputed evidence that the parties met at the rental unit on September 7, 2009 and the tenant gave the landlord a cheque for \$2,250.00 which was intended to be applied to rent for October 2009, the security deposit and partial rent for November 2009. Upon the tenant's request the parties signed a tenancy agreement on September 21, 2009. The tenancy agreement provides that the month-to-month tenancy was set to commence October 1, 2009 and the tenant was required to pay rent in the amount of \$900.00 on the 1st day of every month. On September 30, 2009 the tenant advised the landlord that he would not be moving in to the rental unit. The landlord attempted to deposit the cheque for \$2,250.00 on October 1, 2010 and the cheque did not clear as the tenant had placed a stop payment on the cheque.

The landlord is seeking to recover loss of rent for the month of October 2009 as the rental unit was not re-rented until November 1, 2009. The landlord testified that she started advertising the rental unit for rent on October 5, 2009 and shortly thereafter secured a suitable tenant who was willing to enter into a tenancy starting November 1, 2009. The landlord also testified that the tenant was advised that he would be responsible for paying rent for October 2009.

The tenant testified that he ended the tenancy due to financial reasons and tried to find replacement tenants for the landlord to consider by placing his own advertisement for the rental unit online. The tenant submitted that there were prospective tenants that could have rented the unit sooner than November 1, 2009 but the landlord did not consider those people. Rather, the landlord told him to stop advertising the rental unit.

Analysis

Section 16 of the Act provides that the rights and obligations of a tenant and landlord commence at the date the tenancy agreement is entered into. Based upon the testimony and evidence I was provided, I find that a verbal tenancy agreement was formed on September 7, 2009 and replaced by a written tenancy agreement on September 21, 2009. The undisputed testimony and the written tenancy agreement clearly show that the parties had entered into a month-to-month tenancy. Therefore, in order for the tenant to end the tenancy he was required to do so in accordance with section 45 of the Act.

Section 45 of the Act permits a tenant to end a month-to-month tenancy on a date that is at least one month after giving the notice and is the day before the day in the month that rent is payable. In this case, the tenant gave notice verbally and via email. Neither method is an acceptable form of giving notice; however, the landlord acknowledges receiving the tenant's notice. Even if proper written notice had been received September 30, 2009 the earliest the effective date could have been was October 31, 2009. Therefore, the tenant was obligated to pay rent for October 2009 and failure to do so violated the tenancy agreement and the Act.

Although the tenant cited financial difficulties as the reason for not paying the rent, financial circumstances do not form an exemption from the obligations required of a party under the terms of a tenancy agreement or requirements of the Act. Therefore,

the tenant's financial situation does not factor into my decision as I am bound to administer the Act as it is written.

Section 7 of the Act provides that any party that seeks monetary compensation from another party must do whatever is reasonable to minimize the damage or loss. In this case, the landlord has the burden to show that it took reasonable steps to minimize the loss of rent for October 2009. I am satisfied the landlord made very reasonable efforts to advertise and show the unit for rent after learning the tenant was ending the tenancy. Therefore, I find the landlord entitled to recover unpaid rent of \$900.00 from the tenant.

Enclosed for the landlord is a Monetary Order in the amount of \$900.00 to serve upon the tenant. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$900.00 to serve upon the tenant.

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 10, 2010.

Dispute Resolution Officer