

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

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 tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties have provided substantial documentary evidence the relevant documentation submitted by the landlord includes:

- A copy of a tenancy agreement signed by both parties on March 2, 2006 for a 1 year fixed term tenancy beginning on March 1, 2006 that converted to a month to month tenancy on March 1, 2007 for a current monthly rent of \$890.00 due on the 1st of the month, a security deposit of \$400.00 was paid on February 26, 2006;
- A copy of the tenant's notice dated November 1, 2009 advising the landlords that the tenants will be moving out by November 30, 2009; and
- Copies of advertisements and bills for advertising in local newspapers.

The landlord testified that they received notice to end tenancy from the tenants on November 1, 2009 with an effective date of November 30, 2009. The landlord states they immediately began to advertise and showed the rental unit twice during the last month the tenants lived in the rental unit. The landlord testified that the rental unit was rented effective February 1, 2010.

The tenants testified that they had attempted to deliver their notice to the landlord two or three times on October 31, 2009 prior to 3:00 p.m. when they had to leave to go to a wedding. The tenants acknowledged that they did serve the landlord in person on November 1, 2009. The tenants noted the landlords' property has a locked gate and they could not access the property, but they also did not phone the landlord or leave any message for the landlord. The tenants confirm the notice was dated November 1, 2009 and that they did not try to provide notice to the landlord any earlier than October 31, 2009.

Analysis

Section 45 of the *Act* states a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 88 defines methods that parties can use to serve the other party in the tenancy relationship, such as a notice to end the tenancy. The methods include: leaving a copy with the person; leaving a copy with an agent of the landlord; sending a copy by ordinary or by registered mail to; leaving a copy in a mail box or mail slot at; or attaching to a door or other conspicuous place at the landlord's residence or place of business; by leaving a copy at the person's residence with an adult who apparently resides with the person; or by transmitting a copy to a fax number provided by the person.

If the service is conducted by mail it is deemed received by the other party on the 5th day after it is mailed; if by fax, posting on a door or conspicuous place, or leaving a copy in a mail box it is deemed received on the 3rd day, in accordance with Section 90 of the *Act*.

I find the tenants failed to provide the landlord's notice to end the tenancy in compliance with the tenancy agreement and section 45 of the *Act*.

Section 7 of the *Act* requires a party who claims compensation for damage or loss that results from the other's non-compliance with the *Act* or tenancy agreement to do whatever is reasonable to minimize the damage or loss. As per the landlord's testimony that they began advertising immediately, I find the landlords are in compliance with Section 7.

Conclusion

Based on the above, I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$940.00** comprised of \$890.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$413.83 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$526.17**. 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: April 29, 2010.

Dispute Resolution Officer