



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent, for money owed or compensation for loss or damage under the Residential Tenancy Act (Act), regulation or tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the tenant on April 20, 2010.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this month to month tenancy started on January 15, 2009. There was not a written tenancy agreement in place however the Parties had a verbal agreement concerning the tenancy. Rent for this unit was \$1,300.00 per month which was due on the first of each month.

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The landlord testifies that in February, 2010 he had a discussion with the tenant about him moving back into the rental unit. He claims the tenant indicated that he had enough rent saved for one more year of the tenancy and the landlord claims he was satisfied that the tenant could continue to pay his rent so decide to continue with the tenancy at that time.

The landlord testifies that on March 19, 2010 the tenant gave the landlord 10 days written notice to end the tenancy as per the landlords verbal notice given on February 05, 2010 for the landlords use of the property and stated the tenancy would end on March 31, 2010.

The landlord states that he never gave the tenant a Notice to End Tenancy either verbally or in writing as he felt secure with him being a tenant and that he could pay his rent for at least another year. The landlord states he told the tenant he was happy with him renting his house and that he did not want him to leave. But if he did want to leave he would have to give the landlord one months notice.

The landlord states the tenant moved from the rental unit and the landlord had to move back into it as he had decided not to re-rent it again. The landlord states he was living at his daughters home during the tenancy and had to give her one months notice to end his tenancy there and had to pay his last month's rent for April to her.

The tenant testifies that he had a discussion with the landlord about the landlord wanting to move back into his own house. The tenant claims the landlord did give him verbal notice to end the tenancy during this discussion and the tenant claims he started to look for another rental unit and told the landlord he could move out at the end of February, 2010. The tenant claims that due to this verbal Notice from the landlord he found another rental unit and on March 19, 2010 he gave the landlord 10 days written notice to end the tenancy at the end of March, 2010.

The tenant states the landlord did not give him two months Notice in writing as he wanted to avoid paying him compensation to move out. The tenant claims the landlord has not incurred any loss as he did not re-rent the rental unit out but did move back into it himself which he claims was always his intention.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 45 (1) of the Act states:

45 (1) A tenant may end a periodic 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, and

(b) 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.

I have considered the tenants arguments that he only gave the landlord 10 days notice to end tenancy because the landlord gave him verbal notice to end the tenancy on February 04, 2010. However, Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form

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Both Parties agree that the landlord did not give the tenant written notice to end tenancy for landlords' use of the property, Therefore any verbal Notice the tenant claims to have had from the landlord would not be a valid or legal notice under section 49 of the *Act*.

Consequently I find the tenant did not give the landlord the correct notice period to end the tenancy. The tenant gave the landlord 10 days notice not the required one months Notice as specified under section 45 of the *Act*.

In determining whether the landlords' application for unpaid rent or compensation for loss of rental income will be upheld I have considered what the landlords loss is in this matter and what steps he took to minimize that loss. Section 7(2) of the *Act* states:

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this instance I find the landlord did not attempt to re-rent the unit to minimize his loss but did decide to move back into the unit himself. I accept that the landlord was renting part of his daughters' property at the time and that he had to give her one months notice to end his tenancy there and pay rent for the month of April, 2010 to her. Therefore, the landlord incurred additional costs in paying rent for April along with his own mortgage payment which could have been avoided if the tenant had given the landlord one clear months notice. I also find it would have been unlikely that the landlord could have re-rented the rental unit for April at such short notice even if he had decided not to move back into it himself. Consequently, I find the landlord has established his claim for unpaid rent for April, 2010 and is entitled to a monetary award of **\$1,300.00**.

As the landlord has been successful with his claim I find he is also entitled to recover his filing fee of **\$50.00** pursuant to section 72(1) of the *Act*.



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Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,350.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: August 27, 2010.

Dispute Resolution Officer