

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 3, 2010. The Tenant confirmed receipt of the hearing package.

The Landlord, the Tenant, and the Tenant's Witness appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the fixed term tenancy was effective December 15, 2008 and was set to expire on December 15, 2009. Both parties initialled the tenancy agreement under section 2 b)ii) which that at the end of the tenancy the tenant must move out of the residential unit. Rent was payable on the 15th of each month in the amount of \$900.00 and a security deposit of \$450.0 was paid on November 30, 2008.

The Landlord testified he was seeking \$900.00 for loss of rent for the period of December 15, 2009 to January 15, 2010 because the Tenant vacated the rental unit, cancelling their periodic tenancy, without proper notice. It is the Landlord's position that the Tenant's mother who is the Tenant's Witness today, entered into a verbal month to month tenancy for her son's tenancy to continue. He argued that she called him on November 23, 2009 and it was during that conversation that they agreed to allow the tenancy to continue.

The Tenant testified and stated that he moved out of the rental unit in accordance with his tenancy agreement. It is his position that there were no verbal agreements made to continue this tenancy and stated that the Landlord wanted \$1,000.00 per month for a new tenancy agreement.

The Witness for the Tenant testified and confirmed that she did have a telephone conversation with the Landlord on November 23, 2009 but denied entering into a tenancy agreement on behalf of her son. She confirmed she had acted on behalf of her son when he was busy with work however those dealings only involved requesting repairs or blinds to be installed in the rental unit.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 44 (1) (b) of the Act states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. I note that no written notice is required to end a tenancy that pertains to this section of the Act.

The Landlord's position is that he entered into a verbal agreement with the Tenant's mother to continue the tenancy on a month to month agreement. In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant

agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Section 13 of the Act states that a tenancy agreement must be in writing while section 14 states that a tenancy agreement may not be amended to change or remove a standard term. I note that there is no provision under the Act that would allow the parties to change or amend a written tenancy agreement with a verbal agreement. Any changes or agreements pertaining to a written tenancy agreement must be in writing. Therefore I find the Landlord has failed to provide sufficient proof that the Tenant vacated the rental unit in contravention of the Act. The evidence that is before me supports that the Tenant was required to vacate the unit on December 15, 2009, which is the action the Tenant took. Based on the aforementioned I find the Landlord has not proven that he suffered a loss as the result of the Tenant's actions and I hereby dismiss his claim.

As the Landlord has not been successful with his application I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

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: September 27, 2010.

Dispute Resolution Officer