



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord only. The tenant did not attend the hearing.

The landlord provided documentary evidence confirming that he served the tenant with notice of this hearing via registered mail and that the tenant refused to accept the service of the notice.

I accept that the tenant was sufficiently served with notice of this hearing.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities; for compensation for advertising and for bank charges; 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

The landlord testified the tenancy was to begin on July 1, 2010 for a 6 month fixed term for a monthly rent of \$600.00 due on the 1st of the month with a security deposit of \$300.00 paid.

The landlord further stated the tenant's husband then called him on or about June 15, 2010 to say that the tenant would not be moving in. The landlord submitted a copy of a letter dated June 28, 2010 from the tenant stating that she would not be moving in and that she was providing the landlord with a cheque for \$300.00 to settle the account.

The tenant notes in her letter that the cheque post dated for July 1, 2010 will not be valid. The landlord provided documentary confirmation he received the letter via registered mail on July 8, 2010, after he had already tried to cash the rent cheque of July 1, 2010.

The landlord submitted a copy of a bank print out showing he was charged \$7.00 for the returned cheque of July 1, 2010 as the payment was stopped. The landlord has submitted receipts for advertising the rental unit from June 24, 2010 online and on July 30, 2010 for local print media totalling \$35.82. The landlord testified he re-rented the unit effective August 15, 2010.

The landlord has submitted the tenant is also responsible for \$10.62 in hydro charges for the period of July 1 to August 13, 2010 and for water, sewer and garbage in the amount of \$64.23 for the same period.

Analysis

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45 states that a tenant may end a tenancy, (if it is not a fixed term tenancy) by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the dated the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

This section goes on to say that the notice must comply with Section 52 that requires the notice to be in writing and dated and signed by the tenant. Despite the tenant's husband calling the landlord on June 15, 2010, I find the notice required by law is in the letter written by the tenant to the landlord that is dated June 28, 2010.

As the landlord has confirmed that he received this letter via registered mail, Section 90 of the *Act* states that if a document is served or given by mail, it is deemed received on the 5th day after it is mailed. In this case, the landlord has shown through his documentary evidence that he received on the 10th day after it was mailed.

In either case (5 or 10 days), the landlord would not have received the tenant's notice to end the tenancy until after June 1, 2010 and as such, I find the tenant was responsible for the payment of rent until such time into August 2010 as the landlord was able to rent the unit to a new tenant.

I accept the landlord has fulfilled his obligations in trying to rent the unit and mitigate his losses, as such I find the tenant is responsible for the payment of all rent and utility charges until August 14, 2010.

I accept the landlord's documentary evidence confirming the amounts for utilities and advertising. I also acknowledge, the landlord still holds the tenant's security deposit and the additional \$300.00 provided by the tenant in her letter of June 28, 2010.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,067.67** comprised of \$900.00 rent owed; \$7.00 bank administrative charges; \$35.82 advertising costs; \$74.85 utility costs 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 \$300.00 and the additional \$300.00 payment provided by the tenant in partial satisfaction of this claim. I grant a monetary order in the amount of **\$467.67**. 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: November 29, 2010.

Dispute Resolution Officer