



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking a monetary order for damage or loss under the Act or tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

Based on the Landlord's testimony, I find this tenancy began on July 1, 2007, for a fixed term of one year ending on June 30, 2008, which continued thereafter on a month to month basis, with an ending monthly rent of \$1,400.00. I heard further testimony from the Landlord that the parties were to enter into subsequent one year fixed term tenancy agreements, but inadvertently never did. The subject of this dispute is the date the tenancy ended, with the Tenant stating the date was June 30, 2010, and the Landlord stating it was July 31, 2010.

The Tenant's claim is \$1,400.00, which is the rent for July 2010 taken by automatic bank draft by the Landlord. In support of her claim, The Tenant gave relevant evidence which included affirmed testimony that she gave verbal notice to the administrative assistant in the Landlord's office that she was ending the tenancy. The Tenant stated she followed this notice with an email on May 25, 2010, to the Landlord stating she was

ending the tenancy on July 31, 2010, followed quickly by another email on the same day to the Landlord stating that she would be ending the tenancy on June 30, 2010. The Tenant testified that she corrected the email on May 25, 2010, for the end of June when she realized that this would be within the time permitted allowed under the Act.

The Tenant testified that the Landlord send her an email the following day, acknowledging the end of the tenancy on June 30, 2010, in part with the Landlord writing that there would be no renewal of the lease at the end of June 30, 2010, unless by mutual agreement, but that he would still appreciate a proper written notice.

The Tenant stated that she prepared the written notice and delivered it to the Landlord's office that day, but the office was closed, she dropped the notice in the mail slot and moved out in June. The Tenant further stated that it never occurred to her to stop the automatic bank draft for withdrawing of July's rent by the Landlord as she believed the tenancy ended on June 30, 2010, and given the three year relationship, did not believe the Landlord would try to collect another month.

In support of his defence of the claim, the Landlord gave relevant testimony which included affirmed testimony that he did send the email on May 27, 2010, to the Tenant with an ending date for the tenancy of June 30, 2010, but stated that this was a mistake. The Landlord further stated that he always believed the Tenant's move out date was July 31, 2010, as stated in her original email.

The Landlord testified that the Tenant said she would drop off the written notice, but that neither he nor his assistant ever received it.

The Landlord testified that the next communication from the Tenant was a notation on the file dated July 7 that a move out inspection would be on July 9, 2010. The Landlord admitted that he did not know who initiated the contact. The Landlord stated the move out inspection was cancelled, he believed by the Tenant, and re-scheduled for July 15, 2010. The Landlord stated it was not uncommon for tenants to schedule a move out inspection prior to the end of the tenancy.

In response to the Landlord's testimony, the Tenant gave rebuttal statements including her testimony that after dropping off the written notice, she did not hear from the Landlord or his office, so she began calling the office asking if they received it.

The Tenant testified that she had not heard from the Landlord by the end of June to schedule a move out inspection, so she called the assistant and set up an appointment

for July 9. The Tenant then stated the appointment for the 9th was cancelled by the Landlord's office and rescheduled for July 15, 2010.

Upon my query, the Landlord referenced his appointment book for that time period and noted that he had an appointment at 9:00 a.m. on July 9, but no other appointments that day and none for the time period of July 10-14. The Landlord admitted that it was possible he was out of the office for this time period.

Neither party submitted any written evidence, but I instructed the parties that they could testify about their evidence. Both parties acknowledged receipt of the emails each from the other and I had each party read the Landlord's email in question, referencing the end of the tenancy would be on June 30, 2010.

Analysis

Based on the above testimony and evidence, and on a *balance of probabilities*, I find as follows:

In the circumstances before me the Tenant and the Landlord have failed to provide any documentary evidence. However I accept the parties' testimony regarding the emails as each party brought to the hearing the same documents and with my instruction, read the email in question, from the Landlord to the Tenant.

The Landlord stated that email transmissions are not an accepted form delivery of documents, which is consistent with section 88 of the Act. I find that service of the original email notice of the Tenant's intent to vacate on June 30, 2010, did not occur in a manner that complies with the Act. However, section 71 of the Act permits that I may make an order that a document not served in accordance with section 88 was sufficiently served. The provision of section 71 is discretionary and in this case I find that the Tenant's email service of the notice sufficiently served as I find that both parties engaged in this type of communication. Of particular importance is my **finding** that the Landlord acknowledged this date in his May 26 email response to the Tenant's emails.

The Landlord read his May 26, 2010, email to the Tenant and this email stated that the end of the tenancy was June 30, 2010, not to be renewed except with mutual agreement. The Landlord's testimony that this was an error is inconsistent and I therefore find his testimony lacks credibility. Further I find it more likely than not that the Tenant dropped off her written notice to end the tenancy, effective June 30, 2010. Further I find it more likely than not that the Landlord's office cancelled the move out inspection date, as testified to by the Tenant, given the Landlord's acknowledgment that

his appointment booked contained no activity in the time frame of July 9, after the 9:00 appointment, until July 14.

Considered in its totality, I favour the oral evidence of the Tenant over the Landlord and I find that the Tenant delivered effective notice to end the tenancy on May 25, 2010, pursuant to section 45 of the Act, and that the tenancy ended on June 30, 2010.

I find the Landlord breached the Act by keeping rent money for July, when the Tenant had vacated the rental unit in June, 2010. Therefore I find the Tenant did not owe rent for the month of July 2010, and that she has established a monetary claim for **\$1,400.00**. I grant a monetary order in those terms, which is enforceable in the Provincial Court.

I have not awarded the filing fee as that issue was not before me.

Conclusion

The Tenant is granted a monetary order for \$1,400.00.

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: December 09, 2010.

Dispute Resolution Officer