



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing the landlord reduced the claim to exclude unpaid hydro.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover loss of rent for September 2010?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced November 8, 2008 and the tenants paid a \$707.50 security deposit. The tenants were required to pay rent of \$1,415.00 on the 1st day of every month. On August 3, 2010 the tenants gave written notice to end the tenancy effective August 31, 2010.

The landlord is seeking compensation for loss of rent for the month of September 2010 based on the tenant's insufficient notice to end tenancy. Upon enquiry, the landlord stated the rental unit is still vacant and confirmed that the rental unit has not been under renovation. The landlord explained that there are several units that are vacant in the building and the landlord advertises all the vacant units, although not individually.

The tenants were of the position that giving notice on August 3, 2010 was adequate given August 1, 2010 was a holiday and August 2, 2010 was a Sunday. The tenants indicated they did not give notice sooner as they were waiting to get approval for their

new living accommodation. The tenants pointed out that their unit was not specifically advertised and the landlord only advertised that there were vacant units in the building.

Provided as documentary evidence were copies of the tenancy agreement, the tenant's written notice to end tenancy, move-out inspection report and security deposit refund request form.

Analysis

Section 45 of the Act provides for a tenant's notice to end a periodic tenancy. Section 45(1) provides that the effective date must be:

- (a) not earlier than one month after the date the landlord receives the notice; and
- (b) is the day before the day in the month that rent is payable under the tenancy agreement.

Section 53 of the Act provides that when a notice to end tenancy has an incorrect effective date, the effective date automatically changes to comply with the requirements of the Act.

In this case, the rent was due on the 1st day of the month; thus, to give notice to end the tenancy effective August 31, 2010 the tenants had to ensure the landlord received notice no later than July 31, 2010. Since the tenant's notice was received by the landlord August 3, 2010 the effective date automatically changed to read September 30, 2010.

By giving insufficient notice to end the tenancy, the tenants violated the Act. Where a party violates the Act, the other party may seek compensation to recover the damage or loss that resulted from the violation; however, section 7(2) of the Act requires the party seeking compensation to do whatever is reasonable to minimize the damage or loss.

Upon hearing from the landlord I am satisfied the landlord took sufficient steps to advertise vacant units in the building and the landlord is not specifically required to advertise a particular unit in a certain way. Rather, the effort has to be reasonable and I accept that due to the high vacancy rate the rental unit was not re-rented for September 1, 2010.

In light of the above findings, the landlord is entitled to recover loss of rent from the tenants for the month of September 2010 and I award the landlord \$1,415.00.

Although the landlord was successful in establishing an entitlement to loss of rent, I award only one-half of the filing fee to the landlord for the following reason. I note that the move-out inspection report is dated September 1, 2010 but the form does not provide space for a tenant to agree for charges for rent or other amounts. The landlord drafted the security deposit refund form which does provide for charges for unpaid rent but that form was not drafted until September 14, 2010. The landlord made this application September 15, 2010. I do not see evidence that the landlord tried to seek the tenants' authorization to retain the security deposit for loss of rent before making this application.

The landlord is provided a Monetary Order to serve upon the tenants in the total amount of \$730.93, calculated as follows:

Loss of rent – September 2010	\$ 1,415.00
Filing fee (one-half)	25.00
Less: security deposit and interest	<u>(709.07)</u>
Monetary Order for landlord	\$ 730.93

The landlord must serve the Monetary Order upon the tenants and may enforce it through the Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided an Order of Possession for the balance of \$730.93 to serve upon the tenants.

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: January 21, 2011.

Residential Tenancy Branch