

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants agreed that they received a copy of the landlord's dispute resolution hearing package by registered mail in September 2010. I am satisfied that the landlord served the tenants with this package in accordance with the *Act*.

During the hearing, the landlord asked for permission to revise his claim for a monetary award from \$550.00 to \$517.28, the pro-rated amount of lost rent the landlord suffered as a result of the tenant not moving in on September 15, 2010. I revised the landlord's claim for a monetary award to \$517.28 (16 days at \$32.33 per day).

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent or loss arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified that during an inspection of the existing subsidized three bedroom rental unit the tenants were occupying it was learned that their household composition required them to live in a four bedroom rental unit. After discussions with the tenants, the landlord committed to finding a pair of two bedroom living units. The landlord found a suitable two bedroom rental unit for two of the former members of the tenant's household. The landlord later located another two bedroom rental unit for the tenants/respondents which they were to occupy in mid-September 2010.

On August 10, 2010, the male tenant and the female tenant's authorized agent, a friend who is an experienced rental property manager, signed a Residential Tenancy Agreement to transfer to the rental unit in question in September 2010. Monthly rent for this periodic tenancy was set at \$970.00.

In his written evidence and in his initial oral testimony, the landlord stated that he continued to retain the tenant's \$465.00 security deposit, paid on March 16, 2004, that the landlord had applied to the tenancy in dispute. However, the female tenant testified that both the date and the amount of this security deposit were in error. She said that the landlord no longer retains the tenants' security deposit. During the hearing, the landlord's assistant checked the landlords' records. The landlord then gave sworn testimony that the information provided by the tenant about the security deposit was correct. The landlord testified that the female tenant's previous security deposit from another tenancy was returned to her with interest on September 16, 2010. The parties agreed that the landlord no longer holds any security deposit from the tenant(s).

The landlord testified that eight days before the scheduled transfer date, the tenants notified the landlord that they were no longer planning to transfer to this rental unit as they were moving to another community. The landlord submitted written evidence of a September 7, 2010 letter signed by the male tenant which reads as follows:

To Whom it May Concern:

We will not be moving into the Unit #123 in 4567 1st Ave Somewhere. B.C. on Sep. 15, 2010.

The male tenant who signed this letter said that he wrote this letter with the assistance of the landlord's property manager who told him that he needed written confirmation that the tenants were not going to occupy the rental unit. The female tenant testified that her son, the male tenant, telephoned the landlord's property manager a few days before September 7 to let him know that they were moving to XYZ and would not be occupying the rental unit. The female tenant subsequently said that her son made this call four or five days before September 7. She revised this testimony once again saying that her son provided this oral notice to the landlord on September 1, 2010.

The landlord provided written evidence that they were able to rent this suite to another tenant as of October 1, 2010. The landlord applied for a monetary award for the pro-rated 16 days of rental loss from September 15, 2010 to September 30, 2010.

During the hearing, the tenants testified that the landlord failed to properly or fully complete the terms of the August 10, 2010 Residential Tenancy Agreement. They claimed that these deficiencies made this an invalid Agreement. They said that there were no specific dates cited for the required payment of the security deposit of \$485.00 nor was there a specific date when they could occupy the rental unit. The landlord said that specific dates were not identified, as they were reliant on outside tradespersons to complete work on the rental unit the tenants could move into the rental unit. On the only

copy of the Agreement entered into written evidence (by the landlord), there were two dates cited (i.e., September 1, 2010 and October 1, 2010). Another notation on this portion of the Agreement stated “Actual Move In TBA – 15-9-10.” The female tenant testified that she had a different copy of the Agreement and maintained that some of the dates and provisions in her copy showed that the landlord had added provisions to the copy entered into evidence. However, the tenants could have entered their copies of the Agreement into evidence and did not do so. The tenants submitted that the deficiencies they noted were contrary to the *Act*, and that they should not be held responsible for any September 2010 rent as the Agreement had no legal effect.

Analysis

Section 1 of the *Act* defines a tenancy agreement to include “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.”

I find that there was a valid Residential Tenancy Agreement between the tenants and the landlord signed on August 10, 2010. Despite the tenants’ oral testimony to the contrary, I find the male tenant’s written notice of September 7, 2010 provides compelling evidence that there was an expectation through the Agreement that the tenants intended to occupy this rental unit on or about September 15, 2010.

Pursuant to the following provisions of section 16 of the *Act*, I find that this tenancy commenced on August 10, 2010.

Start of rights and obligations under tenancy agreement

16 *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.*

Having found that there was a Residential Tenancy Agreement in effect, I now turn to the notice the tenants gave to the landlord to end this tenancy. Section 52 of the *Act* requires that a notice to end tenancy must be made in writing. In this case, the tenants’ only written notice of September 7, 2010 left too little time for the tenants to avoid responsibility for rent owing from September 15, 2010. Even if I were to accept that oral notice was provided on September 1, 2010 (the earliest of the series of dates of oral notification cited by the female tenant), the tenants still did not provide sufficient notice to the landlord to avoid the tenants’ responsibility for the landlord’s loss of rent from September 15, 2010 until the end of that month.

Section 7(2) of the *Act* requires the landlord to do whatever is reasonable to minimize the tenants' losses. The landlord testified that an immediate attempt was made to advertise this suite for rent on Craigslist, through a womens' centre where rentals have been obtained in the past, and from a range of advocates for those requiring subsidized rentals. I am satisfied that the landlord has complied with section 7(2) of the *Act* in these successful efforts to re-rent the premises as quickly as possible.

Based on my assessment of the oral and written evidence, I find on a balance of probabilities that the landlord has proven his claim for a loss in rental income of \$517.28. I issue a monetary award in that amount in the landlord's favour.

Since the landlord has been successful in this application, I allow the landlord to recover his filing fee of \$50.00 from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$567.28.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.