



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, 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 landlord testified and provided documentary confirmation that he served the tenant with notice of this hearing via registered mail on December 8, 2010. I accept that the tenant has been served sufficiently for the purposes of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage and loss; 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 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on August 5, 2007 for a month to month tenancy beginning on September 1 2007 with rent in the monthly amount of \$978.50 and utilities of \$144.80 due on the 1st of each month and that a security deposit of \$475.00 and a pet damage deposit of \$475.00 were paid. There is no provision in the tenancy agreement for fees to be charge for the late payment of rent.

The landlord provided email correspondence between the landlord and tenant. The landlord specifically provided an email from the tenant dated November 29, 2008 stating that he would be moving out at the end of January 2009 to which the landlord replied via email that he received and accepted the tenant's notice.

The landlord provided another email dated November 30, 2008 from the tenant stating that his plans had changed and that he would be moving out by midnight December 30, 2008. The landlord asserts that he did not receive this notice via email until December 5, 2008.

The landlord provided a copy of a move out inspection report signed by the tenant, stating that he does not agree with the landlord's assessment of the condition of the rental unit, on December 21, 2009, the last day of the tenancy.

The landlord's financial claim is as follows:

Description	Amount
Rent – Dec 2008; Jan 2009; Feb 2009	\$2,935.50
Utilities – Dec 2008; Jan 2009	\$289.60
Late payment fee – Nov 2008; Dec 2008	\$100.00
Labour for repairs to rental unit (24 hours)	\$455.00
Total	\$3,780.10

The landlord seeks compensation for rent and utilities for December 2008 and January 2009 based on inadequate service of the tenant's notice to end tenancy sent via email on November 30, 2009. He also seeks rent for February 2009 rent as he had been unable to complete repairs prior to this time in order to rent it to new tenants.

The landlord seeks late payment fees for the late payment of rent for the months of November and December 2009. The landlord testified the tenant paid the rent for December 2009 and then placed a stop payment on it.

The landlord seeks compensation for labour for cleaning the yard; preparing and painting and general cleaning.

Analysis

I accept the landlord has received written confirmation from the tenant that the landlord may retain the security deposit paid by the tenant at the start of the tenancy, from the email from the tenant dated December 6, 2008.

Section 60 of the *Act* allows a party to a tenancy agreement to file an Application for Dispute Resolution within 2 years of the date that the tenancy to which the matter relates ends. The landlord's Application was received by the Residential Tenancy Branch on December 7, 2011.

Section 45 of the *Act* allows a tenant to end a tenancy by giving the landlord a notice with an effective date that, among other things, is not earlier than one month after the date the landlord receives the notice.

Section 89 outlines the acceptable methods for giving a landlord any document that is required to be given under the *Act*. The methods are limited to: leaving a copy with the person; leaving a copy with an agent of the landlord; sending a copy by ordinary or registered mail to an address where the landlord conducts business as a landlord; by leaving a copy at the person's residence with an adult who apparently resides with the person; by leaving a copy in the persons; mail box; by attaching to the door where the person resides or carries on business as a landlord; by transmitting a copy by fax. This section does not include email service of any documents

Section 90 stipulates when items are deemed received depending on the method of service. If served by posting on a door or in a mailbox the documents or by fax the documents are deemed received 3 days later. This is the earliest timeframe allowed except, of course, if given in person for which it is received when accepted by the other party.

Even if I were to accept email as an acceptable method of transmission of the tenant's updated notice, the earliest it would have been deemed received would have been 3 days after it was sent or December 3, 2008. As such, the earliest possible effective date of the tenant's notice to end the tenancy would have been January 31, 2009.

As a result, I find the landlord's Application for Dispute Resolution was submitted within the 2 year timeframe allowed under Section 60 and I find the tenant is responsible for rent and utilities for both December 2008 and January 2009.

I accept, based on the undisputed testimony that the landlord took approximately 24 hours to clean and make repairs to the rental unit and the residential property and find compensation in the amount sought for labour to be reasonable for that length of time.

However, as to the landlord's claim for rent for the month of February 2009, as per the landlord's testimony it took him 24 hours to make the repairs and complete the cleaning but he could not do this because of his work schedule out of town. I find the tenant cannot be held responsible for an additional month's rent due to circumstances within the control of the landlord and not the tenant, I dismiss this portion of the landlord's Application.

And finally, in relation to fees for the late payment of rent, as there is no provision for late fees written into the tenancy agreement, I find the landlord cannot collect late fees. I therefore dismiss this portion of the landlord's Application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2751.60** comprised of \$1,957.00 rent owed; \$289.60 utilities owed; \$455.00 repair and cleaning labour and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit, pet damage deposit and interest held in the amount of \$969.95 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,781.65**. 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: April 15, 2011.

Residential Tenancy Branch