



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings. The Landlord stated that no evidence was served to the Tenant in regards to these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant; whether the Landlord is entitled to compensation for unpaid rent; and whether the Landlord is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2007; that the Tenant was required to pay monthly rent of \$825.00; that the Tenant paid a security deposit of \$412.00 on July 23, 2007; that the Tenant vacated the rental unit prior to February 28, 2011; and that the Tenant provided the Landlord with their forwarding address, in writing, on March 05, 2011.

The Landlord is seeking compensation for loss of revenue for March of 2011. The Landlord stated that he never received notice that the Tenant intended to vacate the rental unit until sometime between February 22, 2011 and February 25, 2011, when they advised him by telephone they were leaving. He stated that he has never received

a written notice to end tenancy from the Tenant. The Landlord is seeking compensation for loss of revenue, due to the alleged improper notice.

The female Tenant stated that the Tenant attempted to telephone the Landlord in late January of 2011 to advise them they were leaving, but were unable to speak with him. The Tenant submitted telephone records that show the Tenant made six telephone calls to the Landlord's telephone number on January 24, 2011.

The female Tenant stated that on January 31, 2011 they placed a letter in the Landlord's mail box, a copy of which was submitted in evidence. The letter informs that Landlord of the Tenant's intent to vacate by March 01, 2011. The letter appears to be signed by the female Tenant and two witnesses.

The male Tenant stated that the two witnesses signed the letter just to confirm that it had been written. He stated that the witnesses did not witness the Tenant deliver the letter to the Landlord.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss. In these circumstances the burden of proof rests with the Landlord.

I find that the Landlord submitted insufficient evidence to establish that the Tenant failed to provide written notice in accordance with section 45(1) of the *Act*. While I accept the Landlord's testimony that he did not find a letter from the Tenant's in his mail box on January 31, 2011, in which the Tenant provided notice of their intent to vacate by March 01, 2011, I find that on January 31, 2011 the Tenant placed a notice to end tenancy in the Landlord's mail box on January 31, 2011.

In reaching this conclusion I was influenced, in part, by the possibility that the letter may have been delivered to the mail box and inadvertently overlooked or misplaced by the Landlord.

In reaching this conclusion I was heavily influenced by the testimony of both Tenants, which I found to be forthright and consistent. I could find no reason to discount that evidence.

In reaching this conclusion I was further influenced by the telephone records submitted in evidence, which corroborates the Tenant's testimony that they were attempting to provide verbal notice over the telephone on January 24, 2011.

In reaching this conclusion I was heavily influenced by the copy of the Tenant's notice to end the tenancy, which was signed by two witnesses. I was particularly influenced by the male Tenant's acknowledgement that these witnesses did not witness the Tenant serving the letter. In the event that the Tenants were inclined to be untruthful in these proceedings, I find that it is more likely they would have alleged that the witnesses had witnessed service of the letter, which is the crux of the issue, rather than simply witnessing the writing of the letter.

As the Landlord has failed to convince me the Tenant did not provide proper notice to end this tenancy, I find that the Tenants ended this tenancy in accordance with section 45 of the *Act* and that they were not required to pay rent for March of 2011 or to compensate the Landlord for any resulting loss of revenue.

Conclusion

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

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: June 17, 2011.

Residential Tenancy Branch