



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for unpaid rent, and to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of shared accommodations in a two bedroom apartment. In his documentary evidence, the landlord provided a partially completed tenancy agreement from the RTB website. The agreement was void of any information concerning the type or length of tenancy on page 2. It specified that in the rent section that rent was \$750.00 for the first 4 months, then \$800.00. The agreement confirmed that the tenant paid a security deposit of \$400.00.

The last page of the agreement was not signed or dated under the landlord's signature; but it was dated August 14th, 2010, signed by the tenant, and identified a one page addendum. The addendum indicated that the contract length was one year, from August 15th, 2010 to August 15th, 2011; it was signed by both parties, however the tenant's signature was completely different than the signature on the RTB tenancy agreement.

The landlord testified that the tenant gave him \$500.00 at move-in and still owes \$250.00 for half a month's rent. He stated that the tenant ended the tenancy contrary to

the agreement and moved out on September 8th, 2010. The landlord claimed unpaid rent for October, November, and December 2010. He said that he advertised on December 25th, 2010 and found a new tenant starting January 2011.

The tenant testified that he never signed any agreement with the landlord. He said that he paid the rent in full, and that the reason for ending the tenancy is that the landlord told him to move out on September 8th, 2010. The tenant received the landlord's application for dispute resolution, but claimed the evidence was not attached. The landlord said that he included the evidence with the notice, and that he never told the tenant to leave.

Analysis

The tenancy agreement is ambiguous; it is nevertheless clear that if it was a fixed term the landlord was obliged to complete the relevant portion of the agreement in the approved form. The landlord did not do this and therefore I am not convinced that the parties entered into a fixed term agreement. The parties' testimony was at complete odds; the landlord said the tenant left without notice, and the tenant said the landlord told him to leave. Nevertheless, Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The landlord did not advertise the unit until December 2010. Therefore I do not find that the landlord took steps to mitigate his loss and I dismiss his claim for unpaid rent.

Concerning ending the tenancy, the parties were again at complete odds; the landlord said he never told the tenant to leave; the tenant said the landlord told him to leave. If the landlord told the tenant to leave, the tenant was not obliged to comply because the notice was not given in the approved form; the tenant's remedy was to request a proper written notice from the landlord. Therefore, whether or not the landlord told the tenant to leave, the tenant should have given the landlord proper written notice. Section 45(1) of the *Act* states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice. I find that the landlord is entitled to recover the loss of rent for the balance of the month of September 2010.

Concerning the landlord's claim of unpaid rent for the first two weeks of the tenancy; in the absence of receipts I dismiss this portion of the landlord's claim.

Conclusion

The monthly rent of \$750.00 is converted to \$25.00 per diem for the month of September. The landlord established a claim of 22 days of unpaid rent for the sum of \$550.00. I authorize the landlord to retain the tenant's \$400.00 security deposit for a balance owing of \$150.00. Since the landlord was partially successful, I award the landlord partial recovery of the filing fee for \$25.00. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$175.00.

This Order may be registered in the Small Claims Court 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: June 06, 2011.

Residential Tenancy Branch