



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, 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, the tenant and her advocate/agent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and lost revenue; 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 26, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on September 15, 2010 as a month to month tenancy for the monthly rent amount of \$1,500.00 due on the 1st of the month and that a security deposit of \$750.00 was paid by the tenant on August 27, 2010.

The landlord testified that the tenant had provided an email to the landlord's girlfriend on January 31, 2011 that the tenant would be vacating the rental unit by the end of February 2011.

The landlord also testified that when he returned home from work on January 31, 2011 at 5:00 p.m. he found the tenant's handwritten notice to end the tenancy dated January 31, 2011 posted on his door.

The landlord contends that since the tenant posted the notice on the door that it is not considered received until 3 days later and as such the tenant gave a late notice to end the tenancy. As result and in conjunction with the landlord's testimony that he was

unable to rent the unit out until April 1, 2011 he is seeking compensation for rent for the month of March, 2011.

Both parties acknowledge the tenant paid the landlord only \$200.00 towards rent for the month of February 2011. The tenant accepts that she owes the landlord \$1,300.00 for rent for the month of February, 2011.

The tenant contends that she provided the landlord with adequate notice to end the tenancy by sending an email to the landlord's girlfriend and provided confirmation, by way of an email response from the girlfriend that the landlord had received the notice.

The tenant contends that the girlfriend has acted on behalf of the landlord on other occasions, such as for payment of rent. The landlord disputes this and says that rent and all tenancy matters were dealt with only by him and that his girlfriend had no standing in the tenancy relationship.

Analysis

Section 45 of the *Act* allows a tenant to end a tenancy by providing the landlord with a notice in writing with an effective date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 88 does not provide for the use of email as an appropriate method of service of a document, such as a notice to end tenancy. Section 88 does stipulate that a document may be served by posting it on the door of the address where the landlord carries on business as a landlord.

Section 90 stipulates that a notice given in this manner is deemed received on the 3rd day after it is posted. However, in this case, the landlord testified that he received the notice to end tenancy on January 31, 2011. The fact that he acknowledges receipt of the notice on January 31, 2011 overrides the deeming provisions of Section 90.

As a result, I find the tenant provided adequate notice to end the tenancy on February 28, 2011 and that the landlord is not entitled to rent from this tenant for the month of March 2011.

However, based on the acknowledgement from the tenant, I accept the tenant owes the landlord \$1,300.00 for partial rent for February 2011.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,325.00** comprised of \$1,300.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application, as the landlord was only partially successful in his application.

I order the landlord may deduct the security deposit and interest held in the amount of \$750.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$575.00**. 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: June 20, 2011.

Residential Tenancy Branch