



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNSD, MNDC

Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord:

The tenant seeks:

1. Recovery of the security deposit.

The landlord seeks:

1. A monetary order for unpaid rent;
2. An order to be allowed to retain the security deposit; and
3. A monetary order to recover the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Summary of Background

The landlord testified that this tenancy began in or about September 1, 2010 and ended on or about May 17, 2011. The landlord says the tenant called him in late April 2011 to advise that she would be moving out in May. The landlord says that although rent was fixed at \$950.00 per month the tenant only paid \$550.00 for May's rent. The landlord is seeking to retain the security deposit of \$475.00 in unpaid rent for the balance of the month of May, 2011.

The tenant agreed that she gave her notice verbally but says she gave her notice on April 1, 2011. The tenant says she moved out of the rental unit on May 15, 2011 not May 17, 2011. The tenant says the landlord agreed that she could move and agreed he would prorate the rent. The tenant did not have this agreement in writing.

Analysis and Findings

Section 45 of the Act says that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

If I accept the tenant's evidence that she gave her notice orally on April 1, 2011 oral notice is not sufficient, further, if she had given it in writing, a notice given on April 1, 2011 would not have been effective until May 31, 2011 therefore the tenant would be responsible for May's rent.

As a general rule a landlord may be compensated for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. In the case the landlord is only seeking rent for the period mid-May to the end of May 2011 in the sum of \$475.00 and I find this to be reasonable.

To realize this sum I will allow the landlord to retain the tenant's security deposit in the sum of \$475.00 (no interest has accrued).

As I have awarded the security deposit to the landlord for unpaid rent, the tenant's application to recover the deposit is dismissed.

The landlord is entitled to recover the filing fee he has paid for this application but has waived that award.

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: September 20, 2011.

Residential Tenancy Branch