



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting him to retain the security deposit. The landlord represented himself and the tenant was represented by A.L.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. At the end of April 2011, the landlord served on the tenant a one month notice to end tenancy for cause. The landlord wrote on the notice that the cause for the notice was that his family would be moving into the rental unit. The tenant telephoned the Residential Tenancy Branch and was advised that because the landlord was ending their tenancy so he could use the rental unit, the tenant was entitled to one month's free rent as compensation. An exchange of text messages took place in which the tenant advised the landlord of this entitlement, to which the landlord responded that he needed the rent as he had 5 children. The tenant then suggested that the landlord keep the security deposit.

The tenant did not pay rent in the month of May and was served with a 10 day notice to end tenancy for unpaid rent. The tenant vacated the rental unit on May 31, 2011 in accordance with the landlord's wishes and requested the return of the \$450.00 security deposit, prompting the landlord to file a claim for unpaid rent for the month of May.

Analysis

The landlord took the position that because the one month notice to end tenancy was not disputed, the tenant is not entitled to compensation as only a two month notice to end tenancy would trigger that entitlement.

When a landlord wishes to assume possession of a rental unit for his own purposes, the Act requires that he end the tenancy by serving a two month notice to end tenancy, triggering the tenant's right to receive one month's free rent. The landlord chose not to use the proper form and instead served a one month notice to end tenancy. Although the incorrect form was used, I find that the landlord should not benefit from his failure to comply with the requirements of the Act. I find that the tenant is entitled to receive one month's rent in compensation and I dismiss the landlord's claim in its entirety.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit
- unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence that the tenant has extinguished his right to the return of the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the \$450.00 security deposit. I grant the tenant a monetary order under section 67 for \$450.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's claim is dismissed and the landlord is ordered to return the security deposit.

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