



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, 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 and one of the tenants.

Tenant A submitted into evidence a letter stating that she was not a party to the tenancy agreement because she was not of legal age at the time of the occupancy. Tenant C testified that Tenant A was with her when she viewed the rental unit; that the landlord understood that Tenant A would be living in the rental unit and that they informed the landlord the Tenant A would only be an occupant.

The parties acknowledge there was no written tenancy agreement and the landlord testified that he understood that both Tenant A and Tenant C would be tenants in the tenancy. The landlord does not recall a conversation with the tenants indicating that one would only be an occupant.

Section 3 of the *Residential Tenancy Act (Act)* states a person who has not reached 19 years of age may enter into a tenancy agreement and the agreement and the Act and regulations are enforceable against the person despite Section 19 of the *Infants Act*.

It is incumbent upon the party making a claim to provide substantiating evidence to corroborate their claim. In the absence of any documentation as to the status and in consideration of the landlord's position that he understood both to be tenants, and in accordance with Section 3 of the *Act*, I find Tenant was a tenant and can be named in the landlord's application as a respondent.

The landlord's Application noted that the landlord sought compensation resulting from a previous Dispute Resolution decision that the landlord indicated was fraudulently obtained. I advised the landlord as that was a separate matter I could not hear any issues related to that decision however the landlord was at liberty to seek a claim of up to the dollar amount named in his application.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, 72, 88, and 90 of the *Act*.

Background and Evidence

The landlord testified the tenancy began on November 1, 2010 as a month to month tenancy for monthly rent of \$900.00 due on the 1st of each month. The tenant did not dispute this. The landlord further testified the tenants paid a security deposit of \$450.00 on October 28, 2010, the tenant testified the security deposit was paid on October 15, 2010.

The landlord asserts that the tenants provided verbal notice to end the tenancy by the end of November only and that the notice was provided to the landlord in phone call on November 8, 2010 and as such the tenant gave short notice and should be responsible for the payment of rent for December 2010.

The tenant testified that they provided the landlord with written notice of their intent to end the tenancy by leaving it in an envelope in the landlord's door on October 30, 2010, and that this service was witnessed by her boyfriend. The tenant submitted a copy of the notice dated October 30, 2010.

Analysis

Section 45 of the *Act* allows a tenant to end a tenancy by giving the landlord notice to end the tenancy effective on a date that, among other things, is not earlier than one month after the date the landlord *receives* the notice.

Section 88 states that a document that must be given to another party may be given by attaching a copy to a door or other conspicuous place at the address the person resides or if the person is the landlord at an address at which the person carries on business as a landlord.

Section 90 of the *Act* states that should a document be given to another party by attaching a copy to a door or other place is deemed to have been received on the 3rd day after it was attached.

Without making a finding on the landlord's version of the provision of notice to end the tenancy and if I were to accept the tenant's testimony that she gave the landlord notice by attaching it to the door on October 30, 2010, it would have been deemed received by the landlord no early than November 2, 2011.

In either circumstance, I find the landlord did not receive the tenant's notice to end the tenancy until after November 1, 2010 which makes the earliest possible end date of the

tenancy to be December 31, 2010 and the tenants remain responsible for the payment of rent.

In the absence of any other testimony from the landlord I find the landlord has failed to establish a monetary claim for any amount above the rent owed.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$950.00** comprised of \$900.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 27, 2011.

Residential Tenancy Branch