



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 an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof he established a loss as a result of this tenancy?

Background and Evidence

The Tenant affirmed he received copies of the Landlord's hearing documents however he did not receive copies of the Landlord's evidence. The Landlord could not provide testimony about how or when his evidence was served to the Tenant.

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement that began on September 1, 2010 and was set to switch to a month to month tenancy agreement after August 31, 2011. Rent was payable on the first of each month in the amount of \$1,375.00 and on September 1, 2011 the Tenant paid \$687.50 as the security deposit.

The Landlord affirmed that the Tenant vacated the property without prior notice to the Landlord and he left two roommates living in the rental unit. The Landlord advised he was being vague about the situation because he is of the opinion that the Tenant is responsible to cover the Landlord's loss of rent because the Tenant was the only person who was named on the lease. When asked how he found out the Tenant had vacated

the property he advised he received an e-mail from the Tenant on November 27, 2010 which he read into evidence. In summary, the Landlord stated the e-mail advised him that previous to the November 27, 2010 email the Tenant had moved out of the rental unit because he could not get along with the two girls who remained in possession of the rental unit. The Landlord stated that he had told the Tenant that he would be willing to transfer the lease over to one of his former roommate's however they never met up to follow through with the transfer.

The Landlord stated that he first attended the rental unit, after receiving the November 27, 2010 e-mail in mid to late January 2011 to collect rent when he noticed the unit appeared to be abandoned. He then posted a 10 Day Notice to the door and took a picture of it.

The Landlord advised that rent was paid by direct deposit into his account and the transactions did not provide a name of who completed the deposit. For December 1, 2010 rent the Landlord said he received an initial payment of \$500.00 sometime around the beginning of December and \$375.00 later that week. The Landlord did not have the exact dates with him so could not provide testimony of exactly when the partial payments were received. He said he made several calls to the one female roommate and sent e-mails to her to attempt to collect the rent but to no avail. He said that at some time during December he attempted to contact the Tenant about rent but could not provide specifics about when or how he attempted to contact him.

When asked when he regained possession of the rental unit the Landlord initially stated he regained possession at the end of January 2011. Then after clarifying his statements the Landlord claimed he attended the rental unit in mid January and based on the condition of the unit he deemed the tenants had vacated the unit so he began cleaning up the house. He said that he is aware that there are strict laws about a landlord throwing out a tenant's possessions so he waited until the end of January before throwing out any of the Tenants' possession or garbage that was left behind so that is when he felt he regained possession.

When I asked the Landlord why he did not attend the rental unit in December 2010 to collect the balance of rent due or why he did not attempt to evict the tenants, he began by saying he could never reach the female roommates by phone or e-mail and they were never there when he went to the unit. Then he said he posted the eviction notice around December 10, 2010 instead of mid January 2011 like he initially stated. I asked the Landlord why he did not apply for an Order of Possession in December instead of losing rent for the month of January 2011 to which he replied, "I didn't know applying for an order of possession was the correct course of action."

The Landlord confirmed he is still holding the Tenant's security deposit. He did not advertise the rental unit until February 13, 2011 and it was not re-rented until April 1, 2011. When asked why he did not advertise the unit sooner, the Landlord said it needed a lot of cleaning before he could re-rent it. The Landlord then reiterated his testimony stating he posted the eviction notice on December 10, 2010 and he began cleaning up the unit in mid January 2011, holding onto the tenants' possessions until the end of January 2011.

The Tenant affirmed he had vacated the property prior to November 1, 2010 and that he did not inform the Landlord until November 27, 2010 via e-mail. He had been told by one of the roommates that she had been added to the lease by the Landlord so he assumed it was okay for him to leave.

The Tenant said he used to collect the rent and complete the bank transfer payment. The last bank transfer he did was for October 1, 2010 rent. The remaining tenants or roommates would have conducted the bank deposit for November 1st and December 1, 2010 rents.

The Tenant states that he had no communication or telephone messages from the Landlord attempting to collect for December 2010 rent. He advised that he did not hear from the Landlord until February 22, 2011 when he received an e-mail from the Landlord that he read into evidence. In this February 22, 2011 e-mail the Landlord requested his address so the Landlord could arrange to get his name off of the lease. He responded to this e-mail advising the Landlord he was in the midst of moving and then sent his forwarding address to the Landlord in April 2011.

The Tenant confirmed he made no effort to seek the return of his security deposit as he felt the Landlord was entitled to keep it because of the mess that was left in the house. He has knowledge that the last female tenant moved out of the rental property in mid January 2011 however he does not know if or when an eviction notice was issued.

The Landlord did not provide copies of the 10 Day Notice or of the photograph he took after posting the notice to the door. I requested that the Landlord provide copies of the Notice and the photo to the *Residential Tenancy Branch* no later than October 28, 2011.

Analysis

The Landlord was not able to testify how or when he provided the Tenant with copies of his evidence; therefore I accept the Tenant's affirmed testimony that he did not receive

the Landlord's evidence. Not serving evidence to the respondent is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

As instructed by me, additional evidence was received at the *Residential Tenancy Branch* on October 26, 2011, from the Landlord which included a copy of the 10 Day Notice which was issued January 12, 2011 and a copy of the photograph displaying the Notice taped to a door. This 10 Day Notice includes the name of the female roommate as a tenant. In order to uphold the principles of natural justice I have attached copies of these two documents to this decision.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove they did whatever was reasonable to minimize a loss.

Section 44(1)(d) of the Act provides that a tenancy ends if the tenant vacates or abandons the rental unit.

After careful consideration of the evidence before me I find the Tenant who is named in this dispute, vacated the property on or before November 27, 2010, the date the Landlord was informed in writing, via e-mail, and that the two females were left to reside in the unit. Accordingly the tenancy for the Tenant, as named in this dispute, ended November 27, 2010 pursuant to section 44(1)(d) of the Act.

There is insufficient evidence to support the Landlord mitigated a potential loss after being informed the Tenant vacated the property, as there is no evidence before me to prove the Landlord took action in December 2010 to have the remaining occupants removed from the rental unit. Conversely, the evidence supports the Landlord accepted rent payments from the two occupants therefore establishing a verbal tenancy agreement with the two females.

Section 1 of the Act provides that a "**tenancy agreement**" means an agreement, whether written or oral, expressed or implied, between a landlord and a tenant(s) respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

The Landlord accepted a partial rent payment from the female occupants for the month of December 2011, sometime during the first week of December 2011, knowing full well the male Tenant had vacated the property. I do not accept the Landlord's argument that he did not know who paid the December 2010 rent as a reasonable person ought to have known it was not the male Tenant who paid the rent because he notified the Landlord November 27, 2010, that he had moved out and left the two females in the rental unit.

I find that by accepting the payment towards December 2010 rent the Landlord entered into a verbal tenancy agreement with the two female occupants. Accordingly the male Tenant's obligation to the fixed term tenancy ended on or about December 1, 2010, the date the Landlord entered into the verbal tenancy agreement with the female occupants.

Based on the aforementioned I find there to be insufficient evidence to prove the Landlord's claim against the name respondent. Accordingly, I dismiss the Landlord's claim in its entirety.

Conclusion

I HEREBY DISMISS the Landlord's claim.

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: October 27, 2011.

Residential Tenancy Branch