



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord gave undisputed oral testimony that the tenant told him on July 1, 2011 that she was planning to end her tenancy by August 1, 2011. He entered undisputed oral and written evidence that the tenant sent him an electronic mail (email) message on July 1, 2011 confirming her intention to end her tenancy on August 1, 2011. He said that he did not receive this message until August 2, 2011. The tenant did not dispute the landlord's claim that she never sent him any written notice to end this tenancy, as required under the *Act*.

The tenant confirmed the landlord's oral and written evidence that he handed her a copy of his dispute resolution hearing package on September 14, 2011. The landlord entered a copy of a witnessed document signed by the tenant confirming that she received the hearing package that date. I am satisfied that the landlord served the tenant with his hearing package in accordance with the *Act*.

At the hearing, I agreed to the landlord's request to amend his application to include the recovery of his \$50.00 filing fee. The landlord had submitted and served the tenant with an amended application to include this item in his application for dispute resolution.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on January 1, 2011. Monthly rent was set at \$750.00, payable in advance on the first of each month. The tenant paid a \$375.00 security deposit on December 21, 2010. The parties agreed that the tenant had given her written permission to the landlord to keep her security deposit. The landlord provided a copy of the tenant's signed agreement in the joint move-out condition inspection report of July 31, 2011 allowing him to keep her security deposit to offset damage and cleaning costs that he would incur based on the condition of the rental unit at the end of her tenancy that date.

The landlord applied for a monetary Order of \$750.00 for his loss of rent arising out of the tenant's failure to provide adequate notice to end her tenancy as required under the *Act*. The parties agreed that the funds retained from the tenant's security deposit did not include any allowance for unpaid rent for August 2011. The landlord provided written evidence to support his claim that he did not receive any rent for August 2011, although he placed advertisements on Craigslist as soon as the tenant gave her oral notice to end this tenancy. The landlord provided copies of his advertisements and testified that he was able to secure a new tenant who commenced paying rent on September 1, 2011. The tenant did not dispute the landlord's claim that he tried to rent the premises for August 2011.

Analysis

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. Section 52 of the *Act* requires that a tenant provide this notice in writing.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case, in order to avoid any responsibility for rent for August 2011, the tenant would have needed to provide her notice to end this tenancy before July 1, 2011. As that did not occur, the landlord is entitled to compensation for losses he incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for September 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for losses resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for August 2011. He provided undisputed written evidence that he placed an advertisement on a rental website as soon as the tenant gave her oral notice to end this tenancy. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' losses.

For these reasons, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing. I find that the landlord is entitled to a monetary Order in the amount of \$750.00, for his loss of rent for August 2011.

Since the landlord was successful in his application, I find that he is entitled to recover his \$50.00 filing fee for his application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$800.00 to compensate the landlord for his losses arising out of this tenancy and for recovery of his filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 25, 2011

Residential Tenancy Branch