



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, 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 pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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, to make submissions and to cross-examine one another. Since the landlord had identified two names for the tenant, the tenant's agent (the agent) clarified that the tenant had changed his name to the version cited above. The landlord amended his application to eliminate the tenant's previous name prior to his name change.

The tenant's agent (the agent) testified that the tenant tried to hand his written notice to end this tenancy to the landlord on October 9, 2011 after having received an oral notice to end this tenancy from the landlord the previous day. The landlord testified that he did not give an oral notice to end this tenancy and that he did not receive the tenant's written notice to end this tenancy until October 11, 2011, after he posted his own 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenant's door on October 11, 2011. The agent admitted that the tenant provided no written notice to end this tenancy prior to October 1, 2011, nor did he receive any written notice to end this tenancy from the landlord with an effective date earlier than November 30, 2011, the date identified on the landlord's 1 Month Notice.

The landlord testified that he sent the tenant two copies of his dispute resolution hearing package by registered mail on November 9, 2011. The agent confirmed that the tenant received the landlord's dispute resolution hearing package by registered mail. I am satisfied that the landlord served this application to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord leases this rental property from the owner of this property who has given him written permission to sub-let rooms within the rental building to other tenants. The landlord lives in one of the bedrooms and rents out two other bedrooms to tenants, one of which was occupied by the tenant as of July 1, 2011. The tenant shared bathroom and kitchen facilities with the other two tenants, one of whom is the landlord in this application. The periodic tenancy set the monthly rent at \$460.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$230.00 security deposit paid on June 10, 2011. The tenant vacated the premises on October 28, 2011 without paying any rent for November 2011.

The landlord applied for a monetary award of \$302.45. He asked to be given permission to retain \$230.00 from the tenant's security deposit for unpaid rent from November 2011. He requested only one-half month's rent for November 2011 because he had been successful in mitigating the tenant's losses by renting the tenant's rental unit to another tenant who commenced paying rent as of November 15, 2011. The landlord also requested a monetary award of \$72.45 to reimburse him for advertising costs he incurred when the tenant ended his tenancy earlier than planned. The landlord also applied for recovery of his \$50.00 filing fee for his application.

Analysis

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for November 2011, the tenant would have needed to provide his notice to end this tenancy before October 1, 2011.

Through written evidence and oral testimony by his agent at the hearing, the agent submitted that the tenant had to end this tenancy early because of concerns for his safety. I see little evidence that would demonstrate that the landlord had breached a material term of this tenancy agreement and in this way enabled the tenant to end the tenancy early and without becoming responsible for rent owing for November 2011. The tenant is a young physically fit young man while the landlord is a smaller senior citizen with back and knee problems. I find little substance to the agent's assertion that

the tenant's concerns about potential violence from the landlord justified the tenant to end this tenancy early and without complying with the *Act*.

I find that the tenant did not comply with the provisions of section 45(1) of the *Act* to provide notice the day before the day in the month when rent is due in order to avoid responsibility for the rent, in this case, for November 2011.

There is undisputed evidence that the tenant did not pay any rent for November 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss 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 November 2011. He submitted written evidence that he placed advertisements for this rental unit and was successful in mitigating the tenant's losses for November 2011 by one half. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss. Consequently, I find that the landlord is entitled to a monetary award of \$230.00, representing one-half of the rent owed by the tenant for November 2011.

I find that the landlord has demonstrated that he undertook advertising costs in the amount of \$72.45 in order to attempt to successfully mitigate the tenant's loss in rent for November 2011. As such, I find that the landlord is entitled to a monetary award of \$72.45 to compensate him for advertising costs that he indicated he was seeking in the Details of his Dispute in his application for dispute resolution.

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

I allow the landlord to retain the tenant's \$230.00 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Conclusion

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, his advertising costs and his filing fee for this application, and to retain the tenant's security deposit.

| Item | Amount |
|---|-----------------|
| Unpaid Portion of November 2011 Rent (\$460.00 x 50% = \$230.00) | \$230.00 |
| Advertising Costs | 72.45 |
| Less Security Deposit | -230.00 |
| Recovery of Filing Fee for this application | 50.00 |
| Total Monetary Order | \$122.45 |

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: January 27, 2012

Residential Tenancy Branch