



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue to be Decided

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2011 and ended on December 1, 2011 and that the tenants paid a \$465.00 security deposit at the outset of the tenancy.

The landlords testified that they received verbal notice on November 7, 2011 that the tenants were ending the tenancy on December 1 and received written notice on November 9. They testified that on November 10 they began advertising the unit for rent but were unable to re-rent the unit for the month of December. They seek to recover from the tenants lost income for December.

The tenants testified that they gave the landlord written notice together with their rent cheque on November 1 and that they telephoned the landlord three times a day from November 1 – 7 to ask whether he had received the notice. They stated that the rent cheque was negotiated on November 3. When they finally contacted the landlord by telephone on November 7, he advised that he had not received the written notice and asked that they give him another notice. He attended at the rental unit on November 9 and told the tenant who wrote the second notice that she had to date it November 9.

The landlords stated that although they were available to receive a telephone call prior to November 7, they did not receive any calls until that date.

Analysis

In order to succeed in their claim, the landlords must prove on the balance of probabilities that the tenants failed to give adequate notice that they were ending the tenancy and that this failure led to the landlords losing revenue for the month of December.

Section 45 of the Act provides that tenants must give written notice to the landlord on the day in the month before rent is due. As rent was due on the first day of each month, in order to end the tenancy on November 30. Verbal notice is ineffective to end a tenancy. The tenants claim that they gave their notice just one day late while the landlords claim it was 10 days late. I find it unlikely that the tenants would have given written notice to the landlords on November 1 and then telephoned repeatedly to inquire as to whether or not they had received it, particularly as the rent cheque with which it was given had been negotiated. I find it more likely than not that the tenants gave no notice until November 7 and that the notice given on that day was verbal. I find that the landlords did not receive written notice until November 9.

The tenants did not dispute that the landlord made efforts to re-rent the unit and I find that the landlords acted reasonably to minimize their losses. I find that the loss of income for the month of December was directly attributable to the late notice given by the tenants.

I therefore award the landlords \$980.00 which represents \$930.00 in lost income for December and the \$50.00 filing fee the landlords paid to bring their application, which fee I find they are entitled to recover. I order the landlords to retain the \$465.00 security deposit in partial satisfaction of their claim and I grant them a monetary order under section 67 for the balance of \$515.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order for \$515.00 and will retain 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: February 21, 2012

Residential Tenancy Branch