



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNr FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for loss of rent stemming from the tenant ending the tenancy without proper notice under the Act.

Despite being served by registered mail sent on November 23, 2012, the respondent did not appear.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of rent due to the tenant not complying with the tenancy agreement by moving in and paying rent on the date specified or giving the required amount of notice to end the tenancy.

The issue to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for loss of rent.

Background and Evidence

Submitted into evidence was a copy of a tenancy agreement, signed by both parties, indicating that the tenancy started on November 1, 2011 and the rent was \$1,650.00. The tenant was required to pay a security deposit of \$825.00.

The landlord testified that, after signing the agreement, the tenant gave them a cheque for the security deposit. However, the tenant apparently put a "stop pay" on the security deposit and failed to take possession on November 1, 2011. The landlord testified that the tenant's termination of the agreement was not discovered until the cheque did not clear. The landlord testified that when it became apparent that the tenant was not going to take tenancy, the landlord attempted to find a new renter and commenced advertising.

The landlord stated that they were not successful in finding a new tenant for November 1, 2011 and the landlord lost \$1,650.00 as a result. A new tenant was found for December 1, 2011. The landlord was seeking compensation for the loss of rent of \$1,650.00 for November 2011.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit and section 6 of the Act provides that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if they cannot resolve a dispute.

In this instance I find that the parties entered into a written agreement which stated that the tenant would take possession on November 1, 2011. I find that the tenant did not comply with the Act and the agreement by terminating the tenancy without proper Notice as required under section 45 of the Act.

Section 45 of the Act permits a tenant to end a periodic tenancy by giving the landlord written notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice, and

- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant's notice would need to be in writing. In this instance, I find that the earliest day that the tenant could have ended the tenancy in compliance with the Act for any reason would be December 1, 2011, provided the tenant had served the landlord with the written notice prior to November 1, 2011. In this case, I find that the tenant did not give the landlord a written notice at all.

Section 26 of the Act also states that rent must be paid when it is due, under the tenancy agreement. I find that under the agreement rent of \$1,650.00 was due and payable on November 1, 2011 and the tenant failed to pay the rent.

I find that the tenancy was ended by the tenant in a manner that contravened the Act and the agreement. Section 7 of the Act states that if a landlord or a tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Based on the evidence and testimony, I find that the landlord has established a total monetary claim of \$1,700.00 comprised of \$1,650.00 rent owed for November 2011 and the \$50.00 fee paid by the landlord for this application.

Conclusion

I hereby grant the Landlord an order under section 67 for \$1,700.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and 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: February 27, 2012.

Residential Tenancy Branch