



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

Rule 10.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to amend the application for Dispute Resolution. The tenant (AS) name was removed from the original application. However, the tenant (AS) is present at the hearing to argue the case and the tenant (AS) signed the tenancy agreement and is a party to these proceedings. The Application for Dispute Resolution is amended to add the tenant (AS).

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

On January 26, 2012, the tenants paid the landlord a security deposit in the amount of \$450.00. The tenancy was to begin on February, 1, 2012. Rent in the amount of \$900.00 was payable on the first of each month.

The landlord testified the tenants did not move into the rental unit and did not provide proper notice to end tenancy. The landlord is seeking compensation for unpaid rent for February 2012. Filed in evidence is application for tenancy. Filed in evidence is the tenancy agreement dated January 26, 2012.

The tenant testified that he was at the rental unit on January 31, 2012, and waited from 5pm to 9pm and the landlord did not attend. As a result they moved into another rental unit on January 31, 2012.

The landlord argued that there was no agreement with the tenants that tenancy would commence on January 31, 2012. The landlord states the tenancy agreement states tenancy is to commence on February 1, 2012.

The landlord further argued that he was at the rental unit on February 1, 2012 and the tenants did not appear. The landlord states he tried to call the tenants at both numbers provided in their application, however, there was no answer. The landlord states he further emailed the tenants without any response. Filed in evidence is a copy of the email sent to the tenants dated February 1, 2012.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 16 of the Act states - Start of rights and obligations under tenancy agreement

16 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.

In this case the parties entered in a tenancy agreement on January 26, 2012, the tenants paid a security deposit and the tenancy was to commence on February 1, 2012.

Once the tenants entered into the tenancy agreement, the tenants were obligated to provide the landlord with proper notice to end tenancy.

Section 45 of the Act states - Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord 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.

As this was a month to month agreement commencing on the first of the month, the earliest the tenants were legally entitled to end tenancy was February 29, 2012. Therefore, I find the tenants have breached the Act. The landlord is entitled to compensation for February 2012, unpaid rent in the amount of \$900.00.

I find that the landlord has established a total monetary claim of **\$950.00** comprised of unpaid rent and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$500.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

Conclusion

The landlord is granted a monetary for the balance due.

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: April 11, 2012.

Residential Tenancy Branch