



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This review hearing was granted pursuant to the tenant's request for a review of the original decision and Orders issued October 21, 2011. The review hearing was granted on the basis the tenant could not attend the originally scheduled hearing due to circumstances that were not anticipated and were beyond his control.

On October 21, 2011 the landlord was awarded unpaid and loss of rent for the months of September and October 2011, plus the filing fee paid the application. The landlord was authorized to retain the tenant's security deposit and was provided a Monetary Order for the balance owing of \$1,362.50.

Both parties appeared at the review hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord stated that the tenant served the review hearing documents at another office of the landlord and failed to serve a copy of the Application for Review Consideration as ordered. The tenant was of the position that he properly served the hearing documents he was required to serve upon the landlord. I informed the landlord of the content of the Application for Review Consideration and she agreed to proceed with the review hearing.

I also heard from the parties that since the original hearing of October 21, 2012 the tenants were awarded return of double the security deposit, plus the filing fee, under file no. 785908 and the landlord has satisfied the Monetary Order issued to the tenants. Accordingly, all parties were in agreement that the landlord is no longer in possession of a security deposit for the tenants.

The landlord had named two tenants in the landlord's Application for Dispute Resolution and had sent the hearing documents to the rental unit address. It was established in

the review consideration decision that the tenants were not residing at the rental unit when the landlord mailed the hearing documents. I determined that only the male tenant had signed the Application for Review Consideration. I am not satisfied that the female tenant has been sufficiently served with the landlord's application and notice of the original hearing or this review hearing. Accordingly, I amend the landlord's application to exclude the female tenant.

As a matter of note, the landlord was also provided an Order of Possession on October 21, 2012; however, it was agreed that the tenants had already vacated the rental unit and it not necessary to consider the enforceability of the Order of Possession. Therefore, the remainder of this review hearing decision pertains to the monetary awards granted to the landlord with the original decision.

Issue(s) to be Decided

Should the decision and Monetary Order issued October 21, 2011 be confirmed, varied or set aside?

Background and Evidence

It was undisputed that the tenant was required to pay rent of \$875.00 on the 1st day of every month. The tenancy was a fixed term that commenced September 1, 2010 and expired August 31, 2011. Pursuant to the tenancy agreement, at the end of the fixed term the tenancy would continue on a month-to-month basis.

The landlord submitted that the landlord received a notice to end tenancy from the tenant on September 1, 2011 and the tenant moved out September 1, 2011. According to the landlord's records the rental unit was re-rented starting October 1, 2011.

The tenant submitted that he gave a notice to end tenancy to the manager dated August 25, 2011 and that the manager told him they would make their best efforts to re-rent the unit for September 2011.

The tenant submitted that he wanted to return the keys to the manager August 31, 2011 but the manager told him she could not wait in the office until 6:00 p.m. so that he should return them on the September 1, 2011.

Analysis

Where a fixed term tenancy converts to a month-to-month at the expiration of the fixed term a tenancy is required to give at least one full month of written notice to end the tenancy effective on the expiry date or later. In other words, in order to end the tenancy August 31, 2011 the tenant would have to give written notice to the landlord no later than July 31, 2011.

Where a landlord suffers a loss of rent due to the tenant's failure to give sufficient notice to end tenancy the landlord is entitled to claim against the tenant for the loss. The landlord has the burden to show the loss suffered and that the landlord took reasonable efforts to minimize the loss suffered. The burden of proof is based on the balance of probabilities.

In this case, the tenant clearly did not give sufficient notice to end the tenancy August 31, 2011. Whether the tenant's notice was received August 25, 2011 or September 1, 2011 I accept the landlord's testimony, based on the balance of probabilities, that the unit was not re-rented until October 1, 2011 given the extremely short notice given by the tenant.

Based upon the above, I accept that the landlord suffered a loss of rent for the month of September 2011 due to the tenant's violation of the Act and the landlord is entitled to recover unpaid rent of \$875.00 from the tenant for the month of September 2011. As the landlord re-rented the unit for October 2011 the landlord is not entitled to compensation from the tenant for that month.

I further award the landlord \$50.00 for the filing fee paid for their original application.

In light of the above, I have awarded the landlord a total of \$925.00 for unpaid rent and the filing fee. This award has not been reduced by the security deposit as the security deposit has already been returned to the tenant. A Monetary Order in the amount of \$925.00 accompanies this decision. The landlord must serve the Monetary Order upon the tenant to enforce payment.

Given the outcome of this review hearing I order that the decision issued October 21, 2011 be set aside and replaced by this decision. I further order that the Monetary Order dated October 21, 2011 in the amount of \$1,362.50 is no longer of any force or effect and it is replaced by the Monetary Order that accompanies this decision.

Conclusion

The decision and Monetary Order issued October 21, 2011 are set aside and are no longer of any force or effect. With this decision the landlord has been provided a Monetary Order in the amount of \$925.00 to serve upon the tenant and enforce payment as necessary.

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: June 01, 2012.

Residential Tenancy Branch