



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR O FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent and recover the cost of the filing fee from the Tenant and to uphold contract Tenant signed.

Service of the hearing documents, by the Landlord to the Tenant, was done in persona at the rental unit on April 23, 2012, in accordance with section 89 of the *Act*.

The Landlord and his Agent appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. No one appeared on behalf of the Tenant despite him being served notice of this proceeding in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order and to end this tenancy pursuant to sections 44, 7, and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord's Agent affirmed that the Tenant entered into a tenancy agreement that began on February 5, 2012. Rent is payable on the first of each month in the amount of \$90.00 and on February 5, 2012 the Tenant paid \$450.00 as a security deposit.

The Agent referenced a written agreement that the Landlord and Tenant signed in agreement which is dated April 16, 2012. They are seeking to have the Tenant evicted from the rental unit based on this agreement and to have him ordered to pay the April 2012 rent.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things a copy of the tenancy agreement and the April 16, 2012 agreement signed by both the Landlord and Tenant.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

Order of Possession – The Landlord has not made application to seek an Order of Possession rather they selected “Other” on their application and indicating in their testimony that they were seeking to end this Tenancy. Section 44 of the *Act* provides that a Landlord may end a tenancy for unpaid rent by issuing a 10 Day Notice to End Tenancy in accordance with sections 46 and 52 of the *Act*.

Upon review of the April 16, 2012, agreement I note it references a previous verbal discussion whereby the Tenant’s stated his intent to end the tenancy as of April 15, 2012, and it includes the Landlord’s **request** that the Tenant pay rent for the entire month of April 30, 2012 and vacate the unit on April 30, 2012 [My emphasis added]. As the desire to end the tenancy is clearly indicated to be the Landlord’s request and not a mutual agreement to end the tenancy, I find this agreement does not meet the requirements to end this tenancy in accordance with section 44 the *Act*. Therefore the Landlord’s request to end the tenancy is dismissed.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$900.00 for April 1, 2012, pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. I accept the evidence before me that rent remains unpaid for April 2012.

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlord has met the burden of proof and I award him a monetary claim of **\$900.00** for April 2012 unpaid rent.

The Landlord has primarily been successful with his application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$950.00** (\$900.00 + \$50.00). This Order is legally binding and must be served upon the Tenant.

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: May 10, 2012.

Residential Tenancy Branch