



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent and compensation for loss under the act 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 at the hearing.

Preliminary Issue

The landlords are seeking additional loss of revenue and advertising cost. However, these items are not listed in the detail of dispute. Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Therefore, only the issue of unpaid rent for the month of June 2012, will proceed at today's hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetarily order for unpaid rent?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into an eleven month fixed term tenancy on September 18, 2011 and the agreement was to expire on August 31, 2012. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant. The parties agreed the tenant vacated the rental unit on May 31, 2012. Filed in evidence is a copy of the written tenancy agreement.

The landlord testified that on April 30, 2012, the tenant disclosed that he no longer wished to continue tenancy. The landlord stated he told the tenant that they had signed a fixed term tenancy agreement and he was not agreeing to release the tenant from that written agreement.

The landlord testified that on May 6, 2012, he sent an email to the tenant stating that he is still waiting written confirmation from the tenant, if the tenant was planning to leave the rental unit. The landlord stated he never received written confirmation from the tenant indicating the tenancy would be ending.

The landlord testified in response to the May 6, 2012, email he sent, he received a reply on May 31, 2012, from the tenant with his forwarding address. The landlord stated due the tenant breaching the Act he was not able to rent the unit for June 2012. The landlord seeks to recover loss of rent for June 2012, in the amount of \$1,200.00. Filed in evidence is a copy of the email thread.

The tenant testified that he provided written notice to end tenancy on May 7, 2012, via email to the landlord. However, a copy of this email was not provided in the tenant's evidence package. The tenant stated the landlord mutually agreed to end the tenancy.

Analysis

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

The parties agreed they entered into a fixed term agreement on September 18, 2011, which was to expire on August 31, 2012. The tenant vacated the rental unit on May 31, 2012.

The Residential Tenancy Act states - Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy. [Emphasis added.]

The evidence of the landlord was that he did not agree to release the tenant from the written fixed term tenancy agreement and the tenant did not provide him with written notice to end the tenancy as a result he was unable to rent the unit for June 2012. The

evidence of the tenant was the landlord mutually agreed to end the tenancy and he sent the landlord confirmation on May 7, 2012 via email to end the tenancy. However, this email was not provided as evidence and there was no proof that it was received by the landlord. E-mail is not an approved method of service under the Act.

Under the Residential Tenancy Policy Guideline #30, it states that during the fixed term neither the landlord nor the tenant may end the tenancy except by agreement by both parties. To end a tenancy early by agreement, the landlord and the tenant may agree in writing to end a fixed term tenancy before its expiry. I find there is insufficient evidence to support the tenant's position that the landlords agreed to mutually end the fixed term tenancy agreement.

As a result, I find that the tenant has breached section 45 of the Act as the earliest date he could have legally ended the tenancy was August 31, 2012, as stated in the tenancy agreement. As a result, I find the landlords are entitled to loss of rent for the month of June 2012.

I find that the landlords have established a total monetary claim of **\$1,250.00** comprised of unpaid rent for June 2012, and the \$50.00 fee paid for this application.

I order that the landlords retain the deposit and interest of **\$600.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$650.00**.

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

Conclusion

The landlords are granted a monetary order and may keep the security deposit as partial satisfaction of the claim, and are granted an order 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: July 31, 2012.

Residential Tenancy Branch