



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and the landlord's witness were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlord provided affirmed testimony that the Notice was served on the tenant by registered mail on May 18, 2012. The landlord provided a registered mail receipt with tracking number as evidence and confirmed that the name and address matched the name of the tenant and the new address for the tenant provided by the tenant's new landlord, SK. SK, provided witness testimony affirming the tenant's address was the same address where the landlord mailed the Notice. Documents sent by registered mail are deemed served five days after mailing under the *Act*. The landlord stated that the registered mail was returned as "unclaimed". I find the tenant was duly served on the fifth day after mailing, in accordance with the *Act*.

Preliminary Matter

The landlord indicated in his application that he was seeking unpaid rent for June 2012, as he was not able to secure a new tenant until July 1, 2012. As a result, the landlord requested to amend his application to include a claim for money owed or compensation for loss under the *Act*, regulation or tenancy agreement. Pursuant to section 64 of the *Act*, I amend the landlord's application accordingly.

Issues to be Decided

- Should the landlord be granted a monetary order for money owed or compensation under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to retain all or part of the security deposit?
- Should the landlord recover the filing fee?

Background and Evidence

The landlord testified that a month to month tenancy began on October 31, 2011. The landlord affirmed that rent was due on the first day of each month in the amount of \$1,200.00. A security deposit in the amount of \$600.00 was paid on October 31, 2011.

The landlord testified that he did not receive written notice that tenant would be vacating the rental unit. On April 23, 2012, the landlord confirms the tenant provided verbal notice but did not give a specific date that he would be vacating. The tenant vacated the rental unit on May 15, 2012.

The landlord testified that he wrote a new ad for the purposes of advertising the rental unit on April 23, 2012, however, he was unable to commit to prospective tenants as the tenant would not confirm the date he was vacating. The landlord stated that he advertised the rental unit in a local newspaper, on a social media website and on other popular rental websites. The landlord testified that he secured a new tenant for July 1, 2012. The landlord affirmed that although he offered for tenants to move in early in June, 2012, there were no prospective tenants that were able to move in earlier than July 1, 2012.

The rent cheque for May 2012 provided by the tenant could not be cashed as the tenant placed a stop payment on the cheque. When the landlord called the tenant to ask if there was a problem, the tenant confirmed the stop payment on the cheque and advised the landlord to keep his security deposit of \$600.00 in lieu.

The landlord is claiming for unpaid rent for May 2012, in the amount of \$1,200.00 and loss of rent for June 2012, in the amount of \$1,200.00, and to recover the filing fee.

The landlord provided copies of the stop payment cheque and a summary of events as evidence. All relevant evidence has been considered in this Decision.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Claim for unpaid May 2012 rent and loss of June 2012 rent– The landlord testified that rent in the amount of \$1,200.00 was not paid for May 2012. The landlord affirmed that the tenant did not provide written notice or the date that he would be vacating the rental unit. The landlord states he was not aware the tenant vacated the rental unit until May 15, 2012.

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.

(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Based on the undisputed testimony of the landlord, I find the tenant breached section 45 of the *Act*. The tenant did not provide written notice in accordance with section 52 of the *Act* to the landlord that is not earlier than one month after the landlord receives the notice, and 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.

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Given the tenant's breach of section 45 of the *Act*, I find the landlord is entitled to recover the loss of rent for June 2012.

Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord testified that he was unable to commit to prospective tenants as the tenant did not confirm the date he was vacating the rental unit. The landlord provided evidence of advertising of the rental unit, which I find reasonable. Therefore, I find the landlord has met the burden of proof and I award the landlord a monetary claim of **\$2,400.00** consisting for unpaid rent of \$1,200.00 for May 2012 and loss of rent of \$1,200.00 for June 2012.

The landlord is holding a security deposit of \$600.00, which was paid by the tenant on October 31, 2011. The security deposit has accrued no interest since that date.

As the landlord was successful in his application, I grant the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Unpaid rent for May 2012	\$1,200.00
Loss of rent for June 2012	\$1,200.00
Filing fee	\$50.00
Subtotal	\$2,450.00
Less security deposit	(\$600.00)
TOTAL	\$1,850.00

Conclusion

I find that the landlord has established a total monetary claim of **\$2,450.00** as indicated above. I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1,850.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2012

Residential Tenancy Branch