



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlord to return his security deposit. Both parties participated in the conference call hearing.

The details of the tenant's dispute on the application for dispute resolution and the evidence presented before and during the hearing clearly identify the order sought as a monetary order rather than an order for the return of the security deposit. I have amended the claim to reflect that the claim is for a monetary order.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that on April 29, 2012, they signed a tenancy agreement which provided that the tenancy would begin on May 1, 2012 and would run for a fixed term of one year. Rent was set at \$2,000.00 per month and the tenant provided the landlord with post-dated cheques.

The tenant testified that on April 30, he telephoned the landlord to advise that he would not be honouring the agreement. He stated that the landlord advised that it would "not be a problem" and on the following day further advised that no further action would be required. The tenant testified that he was surprised to discover that on May 1, the landlord cashed his cheque for May's rent.

The tenant suggested that the landlord did not act reasonably to mitigate his losses as the first advertisement the tenant noticed for the rental unit was placed on May 20, 2012.

The landlord testified that the tenant at no time gave him written notice that he was ending the tenancy, stated that he believed their conversation took place on May 2 and testified that the only representation he made to the tenant was that he would immediately begin advertising the unit.

The tenant acknowledged having received his security deposit and other post dated cheques and seeks to recover the \$2,000.00 obtained by the landlord as well as the filing fee paid to bring his application.

Analysis

I find that the parties entered into a binding agreement on April 29, 2012. I further find it more likely than not that the tenant contacted the landlord the following day to advise that he did not intend to proceed with the tenancy. I have arrived at this conclusion because the landlord's evidence shows that he was communicating with potential tenants on May 1, which would not have been possible had he not learned of the tenant's breach until May 2.

Although the ink was barely dry on the contract at the time the tenant purported to end it, this does not relieve the tenant of his obligations under the contract. The tenant will remain liable for payment of rent under the terms of the contract subject only to the landlord's reasonable attempt to mitigate his losses.

I am not persuaded on the balance of probabilities that the landlord represented to the tenant that he would escape any liability whatsoever.

The landlord provided with his written documentation evidence that he immediately began advertising the rental unit, as early as May 1, and continued throughout May and June. I am satisfied that the landlord acted reasonably to mitigate his losses and I find that he is entitled to retain the \$2,000.00 for lost income for May.

I note that the tenant was required by law to provide the landlord with a written notice that he would be ending the tenancy. Although he had not done this as of the date of the hearing, it is clear that the landlord was well aware that the tenancy would not proceed.

Conclusion

The claim is dismissed.

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 27, 2012

Residential Tenancy Branch