



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent and authorization to retain the tenants' security deposit. Both parties appeared or were represented at the 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.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent from the tenants for the month of July 2012?
2. Is the landlord authorized to retain the tenants' security deposit in partial satisfaction of the unpaid rent?

Background and Evidence

The tenancy commenced July 1, 2008 and the tenants paid \$700.00 towards a security deposit. At the end of the tenancy the monthly rent was \$1,510.00 payable on the 1st day of every month and the tenancy was on a month-to-month basis.

The male tenant ceased residing in the rental unit earlier in 2012 although he remained as a co-tenant on the tenancy agreement. The female tenant continued to reside in the unit with young children. On June 30, 2012 the landlord received notification from the male tenant that the tenants had vacated the rental unit.

The landlord re-rented the unit effective August 1, 2012. The landlord is seeking to recover unpaid rent for July 2012 due to insufficient notice to end the tenancy.

The female tenant stated that she was too scared to give the landlord notice to end the tenancy even though the landlord had suggested the tenant move-out on previous occasions.

I asked the tenant to provide an example that would demonstrate why she felt too scared to give the landlord notice to end tenancy. The female tenant pointed to an email written by the landlord after the tenancy ended and submitted that she did not like the tone of the landlord's email.

I noted that the tenant had provided numerous emails exchanges between the parties as evidence, including several received in June 2012. I confirmed with the tenant that the majority of communication with the landlord was via email.

I noted that this had been a rather long-term tenancy that ended rather abruptly. The female tenant explained that problems arose after the basement suite was rented to a new tenant who began using the backyard. The tenant had been of the belief that she and her family had exclusive use of the backyard. As a result the tenant filed an Application for Dispute Resolution on April 20, 2012 seeking such an order, among other issues. The landlord served the tenant with a 1 Month Notice on April 25, 2012.

On May 9, 2012 a dispute resolution proceeding was conducted and on May 11, 2012 the Dispute Resolution Officer found the tenant was not entitled to exclusive use of the backyard and the landlord did not establish grounds to end the tenancy for reasons indicated on the 1 Month Notice. As a result, the tenancy continued and so did problems between the tenant and the basement suite tenant.

From the email evidence provided to me, it is obvious that both the tenant and the basement suite tenant were communicating with the landlord about the alleged activities of the other tenant.

The tenant was of the position the basement suite tenant was making false allegations against her and the landlord was taking sides with the basement suite tenant.

Other issues regarding use of the laundry room, the tenant's obligation to cut the lawn, and the tenant leaving debris in the lawn also arose between the landlord and tenant in June 2012.

Ultimately, the tenant felt as though she could not continue to live in the rental unit with her children and she vacated at the end of June 30, 2012. She asked her husband to communicate to the landlord that the unit was vacated.

Analysis

A tenant may end a tenancy pursuant to section 45 of the Act. Under this section the tenant is required to give the landlord one full month of written notice. Section 45 also permits a tenant to give the landlord a written notice of a breach of a material term of the tenancy agreement and if the landlord fails to correct the breach within a reasonable amount of time, the tenant may end the tenancy earlier. In order to be effective, all written notices to end tenancy must meet the requirements of section 52 of the Act and must be given to the landlord in a manner that complies with section 88 of the Act.

Section 52 of the Act requires a tenant to sign and date a notice to end tenancy, provide the rental unit address and the effective date of the end of tenancy.

Based upon the evidence before me, I find the tenant's text message of June 30, 2012 does not comply with the requirements of sections 45, 52 and 88 of the Act.

In unusual or extreme situations a Dispute Resolution Officer may order a tenancy end on a date other than a date provided for under a specific section of the Act. Having read all of the email communications that were submitted into evidence I find the landlord's communication to be businesslike and indicative of a landlord trying to deal with complaints of one tenant against another tenant. In no way did I find the emails to be harassing or otherwise threatening. Therefore, I find the tenants have not provided sufficient reason for me to order the tenancy ended immediately upon receipt of the text message or any other date before an effective date specifically provided for under the Act.

In light of the above, I grant the landlord's request to recover unpaid rent from the tenants for the month of July 2012 in the amount of \$1,510.00. I further award the \$50.00 filing fee to the landlord. I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the unpaid rent. Accordingly, I provide the landlord with a Monetary Order for the balance of \$860.00 to serve upon the tenants and enforce as necessary.

Conclusion

The landlord has been authorized to retain the security deposit. The landlord has been provided a Monetary Order for the balance of \$860.00 to serve upon the tenants.

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: September 20, 2012.

Residential Tenancy Branch