



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act"). The landlord applied 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 was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants 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 tenants by registered mail on July 13, 2012. The landlord provided a registered mail receipt with tracking number as evidence and confirmed that the names and address matched the names of the tenants and the forwarding address provided by the tenants. Based on the undisputed testimony of the landlord, I find the tenants were duly served in accordance with the Act.

Issue to be Decided

- Should the landlord be granted a monetary order for unpaid rent?

Background and Evidence

The landlord submitted a copy of the month to month tenancy agreement as evidence, which began on January 1, 2009. Rent in the amount of \$2,000.00 was due on the first date of each month; however, the landlord confirmed that he agreed verbally to lower the rent to \$1,800.00 on January 1, 2010. The tenants paid a security deposit of \$1,000.00 at the start of the tenancy.

The landlord stated that he received a text message from the tenants on October 13, 2011 at 8:19 p.m. stating that they would be vacating the rental unit on November 15,

2011. The landlord denies receiving proper written notice from the tenants in accordance with the *Act*. The landlord testified that he advised the tenants that a text message would not suffice and required written notice. The landlord provided an e-mail from the tenants that he stated he received on November 1, 2011 at 8:45 a.m. that states:

“...Hi kal we moved. out to our new place as we were able to get into it early. We didnt have time to clean so u can use the \$1000 damage deposit to hire someone to clean and such. Thx we left keys in. kitchen. drawer. Garage code is...”

[reproduced as written]

Based on the above, the landlord states he used the \$1,000.00 security deposit to have the rental unit professionally cleaned pursuant to the tenants' offer reproduced as written above.

The landlord has applied for a monetary order in the amount of \$1,800.00 for unpaid rent for November 1, 2011 as he was not provided with proper written notice under the *Act*.

Analysis

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

Notice to vacate by the tenants – Based on the undisputed testimony of the landlord and the supporting documentary evidence, I accept that the tenants sent a text message to the landlord on October 13, 2011 advising that the tenants would be vacating on November 15, 2011. 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.

In the matter before me, the rent was due on the first day of the month. As a result, I **find** the tenants breached the *Act* by failing to provide proper notice in accordance with the *Act*. The tenants failed to issue their notice the day before the day in the month that rent is payable under the tenancy agreement. Furthermore, the tenants also failed to provide their notice in writing.

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.

[emphasis added]

Given the above, I **find** the landlord has met the burden of proof and I **grant** the landlord a monetary claim of **\$1,800.00** consisting of the loss of rent for the month of November 2011.

As the landlord has succeeded with their application, I **grant** recovery of the filing fee in the amount of **\$50.00**, resulting in a total monetary claim of **\$1,850.00**.

Conclusion

I find that the landlord has established a total monetary claim of **\$1,850.00**.

I grant the landlord a monetary order under section 67 in the amount 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: September 26, 2012

Residential Tenancy Branch