



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution. The Landlord filed this Application for Dispute Resolution on August 03, 2012.

The Landlord and the female Tenant attended the hearing.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant, via registered mail, at the address noted on the Application, on August 08, 2012. The Landlord submitted Canada Post Documentation that corroborates this statement. The female Tenant acknowledged that these documents had been delivered to the service address; that the male Tenant, who is her brother, is aware of the proceedings; and that he has authorized her to represent him at these proceedings. I therefore find that these documents have been served to the male Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)* however he did not appear at the hearing.

Issue(s) to be Decided

The primary issue to be decided is whether the Landlord has filed this Application for Dispute Resolution in accordance with the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 15, 2005.

The Landlord and the Tenant agree that the Landlord informed the Tenant, via email, that the Landlord would be returning to the country; that the Landlord intended to move back into the rental unit; and that the Tenant should vacate the rental unit by July 31, 2010. The parties agree that a Notice to End Tenancy for Landlord's Use of Property was not served to the Tenant and that the Tenant agreed to vacate the rental unit as a result of email communications between the parties.

The Tenant stated that she found a new home for July 01, 2010; that she was permitted to occupy her new home on, or about, June 15, 2010; that she had all of her property moved out of the rental unit by June 15, 2010; that she had fully vacated the rental unit by July 31, 2010; and that she left the keys in the rental unit on August 01, 2010.

The Landlord stated that the Tenant agreed to meet at the rental unit on August 02, 2010 for the purposes of inspecting the rental unit but the Tenant did not meet him on that date. The Tenant stated that the Landlord did inform her that he would meet her at the rental unit on August 02, 2010 but he did not tell her that the meeting was for the purpose of inspecting the rental unit. She agrees that the Tenant did not meet the Landlord at the rental unit on August 02, 2010.

The Landlord argued that the Tenant continued to occupy the house after August 01, 2010 as she left a couch in the rental unit. He stated that the couch originally belonged to the Landlord; that the Tenant had damaged the couch so she agreed to pay him for it; and that she left it in the unit. The Tenant agrees that she left the damaged a couch belonging to the Landlord; that she agreed to compensate him for the damaged couch; and that she left the couch in the rental unit.

Analysis

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. On the basis of the undisputed testimony at the hearing, I find that the parties agreed to end this tenancy by July 31, 2010, via email. I accept that their email communications served to end this tenancy on July 31, 2010, pursuant to section 44(1)(c) of the *Act*.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant left the keys for the rental unit in the unit on August 01, 2010. I therefore find that she had ceased to occupy the rental unit by August 01, 2010.

I do not accept the Landlord's argument that she continued to occupy the rental unit on August 02, 2010 because she left a damaged couch in the rental unit. Even if this couch was a valuable piece of furniture that was undisputedly owned by the Tenant, I would find it reasonable to conclude, in these circumstances, that the Tenant had simply abandoned the property at the rental unit. I do not find that it would be reason to conclude that the tenancy had continued, given that the Tenant no longer had keys to the rental unit.

Section 60(1) of the *Act* stipulates that if the *Act* does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. As I have determined that this tenancy ended on July 31, 2010, pursuant to section 44(1)(c) of the *Act*; that the Tenant did not occupy the rental unit after August 01, 2010, and the Landlord did not file his Application for Dispute Resolution until August 03, 2012, I find

that the Landlord filed the Application more than two years after the tenancy ended and the Tenant ceased occupying the rental unit.

Conclusion

As the Landlord did not file this Application for Dispute Resolution within the time limits established by section 60(1) of the *Act*, I find that this matter cannot proceed. I dismiss the Landlord's Application for Dispute Resolution, without leave to reapply.

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: October 17, 2012.

Residential Tenancy Branch