



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for a monetary order for unpaid rent, for authority to retain the security deposit, and to recover the filing fee.

The landlord and the landlord’s witness, his mother, appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was 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 matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The landlord testified that the tenant was served the Notice of Hearing on December 5, 2012 by registered mail sent to the tenant at the forwarding address he provided at the start of the tenancy, which is the home of the tenant’s parents. The landlord provided a registered mail tracking number in evidence and called his witness, his mother, as a witness to prove service. The landlord’s mother, LD, testified under oath that a week or two after the tenant vacated the rental unit, she called the home of the tenant’s parents and asked to speak to the tenant. Witness LD stated that the tenant was put on the phone and a discussion surrounding unpaid rent commenced. According to witness LD, and the landlord, they were satisfied that the tenant returned to his parent’s home to reside after vacating the rental unit having failed to pay rent many months. Based on the undisputed testimony of the landlord and his witness, I find the tenant was sufficiently served in accordance with the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The landlord testified that a verbal month to month tenancy agreement began on or about January 1, 2010. Monthly rent was initially \$450.00 per month due on the first day of each month. On November 1, 2010, the rent was reduced to \$400.00 by mutual agreement of the parties. The tenant paid a security deposit of \$225.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that the tenant failed to pay any rent for the four months of May 2012, June 2012, July 2012 and August 2012. The landlord stated that the tenant moved out of the rental unit on or about August 28, 2012 without providing proper notice under the *Act*. The landlord stated that on or about August 27, 2012, he received approximately 24 hours notice from the tenant verbally, not in writing, that the tenant would be vacating the rental unit. As a result, the landlord is also seeking loss of September 2012 rent as the tenant failed to provide proper notice under the *Act*. In total, the landlord is seeking \$2,000.00 comprised of four months of unpaid rent of \$400.00 per month, and September 2012 loss of rent of \$400.00.

Analysis

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

Claim for unpaid rent and loss of rent – The landlord testified that the tenant failed to pay \$400.00 per month for the months of May 2012, June 2012, July 2012 and August 2012. In addition, the landlord stated that due to the tenant vacating the rental unit without proper notice under the *Act* on or about August 28, 2012, the landlord is also seeking the loss of rent for September 2012 in the amount of \$400.00, for a total of \$2,000.00 in unpaid rent and loss of rent.

Section 45 of the *Act* states:

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.

[emphasis added]

Given the above, **I find** the tenant breached section 45 of the *Act* by failing to provide proper notice in accordance with section 45 of the *Act*. 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 failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

I find the landlord has met the burden of proof and has established a monetary claim of **\$2,000.00** comprised of unpaid rent of \$400.00 for the months of May 2012, June 2012, July 2012 and August 2012, and the loss of rent for September 2012 in the amount of \$400.00 due to the tenant breaching section 45 of the *Act*.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

The tenant's security deposit of \$225.00 has accrued \$0.00 interest since the start of the tenancy.

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

Unpaid May 2012 rent	\$400.00
Unpaid June 2012 rent	\$400.00
Unpaid July 2012 rent	\$400.00
Unpaid August 2012 rent	\$400.00
Loss of September 2012 rent	\$400.00
Filing fee	\$50.00
Subtotal	\$2,050.00
<i>(Less Security Deposit with interest)</i>	<i>(\$225.00)</i>
TOTAL OWING TO LANDLORD	\$1,825.00

Conclusion

I find that the landlord has established a total monetary claim of **\$2,050.00**. I authorize the landlord to retain the full security deposit of \$225.00 in partial satisfaction of the claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$1,825.00**. This order must be served on the tenant and 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: March 05, 2013

Residential Tenancy Branch

