



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant, his agent and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for rent of 2 months and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 44, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy originally began as an 11 month fixed term tenancy on September 1, 2010 and that was extended by another fixed term beginning August 1 2011 due to end on June 30, 2012 for a monthly rent of \$1,350.00 due on the 1st of each month. The parties agree the tenants vacated the rental unit on April 30, 2012. The parties agree the tenants had provided the landlord with post dated cheques for the full second fixed term.

The parties agree that the tenant approached the landlord seeking to assign the balance of the fixed term tenancy, if the tenant could find the landlord suitable replacement tenants. The tenants provided the landlord with several potential tenants.

The parties agree the landlord entered into a new tenancy agreement, on April 23, 2012 with a new party for a 1 year fixed term tenancy beginning on May 1, 2012 for a monthly rent of \$1,500.00 with a security deposit of \$750.00 due to be paid on May 1, 2012.

The landlord submits that despite entering into this agreement the new party failed to provide payment of the security deposit or rent and did not move into the rental unit because they did not have any money or income to sustain rental payments as per the agreement.

The parties agree that the landlord had not returned the original tenant's post dated cheques and he cashed these cheques when rent was due according to the tenancy agreement he had with the previous tenants. The tenants seek return of the two month's rent for May and June 2012.

Analysis

Residential Tenancy Policy Guideline #19 states an assignment is the act of transferring all or part of a tenant's interest in or rights under a tenancy agreement to a third party, who becomes the tenant of the original landlord.

The guideline goes on to say the assignee takes on the obligations of the original tenant commencing at the time of the assignment. As such, if the case before me constitutes an assignment to obligation to pay rent for the months of May and June 2012 transferred to the new party from the tenants on May 1, 2012.

However, in this case, I find that by entering into a new tenancy agreement with the new party on April 23, 2012 that required a new security deposit and altered both the amount of monthly rent and the length of the fixed term that a new tenancy agreement began.

In either case, the obligation for the payment of rent would fall to the new party and not to the tenants who vacated the rental unit on April 30, 2013. I therefore find the tenants were not responsible for the payment of rent for May or June 2013 and the landlord should not have cashed the post dated cheques he held from these tenants.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,750.00** comprised of \$2,700.00 rent owed and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 14, 2013

Residential Tenancy Branch

