



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlord's agent (the agent) testified that she and the landlord (her husband) were handed a copy of the tenant's dispute resolution hearing package on or about June 15, 2013. I am satisfied that the tenant served that package and his written evidence to the landlord in accordance with the *Act*.

At the commencement of this hearing, the tenant testified that he has changed his name to the name that occurs above since filing his application for dispute resolution. With the agreement of the parties, I agreed to revise the name of the tenant/applicant to the name that appears above.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or damages arising out of this tenancy?

Background and Evidence

This periodic tenancy started on August 1, 2012. Monthly rent was set at \$1,200.00, payable in advance on the first of each month. The landlord has returned the tenant's \$650.00 security deposit for this tenancy paid on or about July 15, 2012.

The tenant entered written evidence a series of emails between the parties. The tenant also provided a copy of his May 10, 2013 email advising the landlord that he had found another rental unit and would be moving there by June 1, 2013. He also provided a copy of the tenant's written notice to end this tenancy handed to the agent on May 21, 2013. The agent confirmed that on May 21, 2013, she and her husband received the tenant's written notice to end this tenancy by May 31, 2013. The tenant vacated the rental unit on May 31, 2013, at which time the parties participated in the joint move-out inspection of the rental premises.

The tenant maintained that the landlord's email of April 27, 2013 was a notice to end this tenancy. In that email, the landlord advised the tenant(s) that the landlord has been successful in selling this property as of July 31, 2013. The email stated that "as per the tenancy act I must give you notice as I am doing now." In the landlord's email, he advised that he did not know if the new owners would like to keep them as tenants. He stated that the landlord could be flexible as to whether the tenants would need to leave by June 30, July 31, 2013, or May 31, 2013, although he noted that May 31, 2013 "would be pretty last minute."

The tenant's application for a monetary award of \$1,200.00 was to seek recovery of the June 2013 rent he was required to pay to the landlord.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Sections 44 and 52 of the *Act* provide very specific direction as to the ways that a landlord can end a tenancy. As outlined below, any notice has to be in writing and any notice from a landlord must be given in the approved Residential Tenancy Branch (RTB) form:

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.*

In addition to the fact that the landlord's email of April 27, 2013 does not meet the general requirements of section 52 or 52(e), this email does not state an effective date. In fact, the landlord left it very open-ended in his email as to when or even if the tenancy would need to end. I find that the tenant received no valid notice to end tenancy from the landlord. Rather, I find that the only valid notice to end tenancy provided by either party was the tenant's May 21, 2013 written notice to end this tenancy by May 31, 2013.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for June 2013, the tenant would have needed to provide his notice to end this tenancy before May 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing. I find that the tenant did not comply with the provisions of section 45(1) of the *Act* by failing to provide written notice that he was intending to end this tenancy on May 31, 2013, until he gave the landlord his written notice on May 21, 2013.

Section 7(2) of the *Act* places a responsibility on a landlord to do whatever is reasonable to minimize the tenant's losses, in this case the \$1,200.00 the tenant paid him for June 2013. Based on the undisputed evidence presented by the agent, I am satisfied that the landlord did attempt to the extent that was reasonable to re-rent the premises for June 2013. With little formal notice and a pending sale of the property which was to take effect on July 31, 2013, the landlord and the agent still attempted to rent the premises for June and July 2013, by placing advertisements on popular rental websites and by making enquiries amongst their circle of friends. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss.

For the reasons outlined above, I find that the tenant is not entitled to a monetary award for the recovery of his June 2013 rent payment.

Conclusion

I dismiss the tenant's application 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: September 18, 2013

Residential Tenancy Branch

