



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with monetary applications by the tenant and the landlord. The landlord and both parents of the occupant participated in the conference call hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

On September 1, 2013 the landlord and the mother of the intended occupant ("the tenant") signed a tenancy agreement, with rent in the amount of \$725 due in advance on the first day of each month. Where the written agreement addresses the length of tenancy, the words "on a month-to-month basis" are circled. Clause (2) on page six of the agreement indicates as follows: "Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant... [or] it is not enforceable." The parties agreed in the hearing that there is no further written agreement aside from the tenancy agreement and addendum, both signed by the landlord and the tenant on September 1, 2013.

On September 1, 2013 the tenant gave the landlord a cheque for \$2900, representing payment for the first four months of the tenancy. On September 19, 2013 the tenant

gave the landlord written notice of their intention to vacate the rental unit by October 31, 2013. The tenant vacated the rental unit on October 5, 2013.

Evidence of the Tenant

The tenant has claimed recovery of the prepaid rent for November and December 2013, in the amount of \$1450. The tenant's position is that they complied with the requirements under the Act for giving written notice to vacate, and the landlord is not entitled to keep rent for those amounts. The tenant submitted that the written tenancy agreement and addendum signed September 1, 2013 comprise the only agreement between the landlord and the tenant, and the agreement was clearly for a month-to-month tenancy.

Evidence of the Landlord

The landlord has claimed \$1450 in lost revenue for November and December 2013. The landlord submitted that the written tenancy agreement was not the full agreement, as the landlord rented to the tenant with the understanding that her son would occupy the unit until the end of April 2014, when his school year ended. The landlord submitted that there was an implied fixed term.

Analysis

The tenancy agreement clearly indicates, in writing, that the tenancy is rented month to month. There is no written agreement that alters this term. The terms of the written tenancy agreement cannot not be altered except in writing. Therefore, I do not accept the landlord's submission that there was an implied fixed term. The tenancy was a month-to-month tenancy that was terminated on October 31, 2013. The tenants gave proper notice to vacate, and they cannot be held responsible for lost revenue for November and December 2013. The landlord must reimburse the tenants \$1450 for the prepaid rent for November and December 2013.

Filing Fees

As the landlord's claim was not successful, he is not entitled to recovery of his filing fee for the cost of his application.

As the tenant's claim was successful, they are entitled to recovery of the \$50 filing fee for the cost of their application.

Conclusion

The application of the landlord is dismissed.

The tenant is entitled to \$1500. I grant the landlord an order under section 67 for this amount. This order may be filed in the Small Claims Court and 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: January 21, 2014

Residential Tenancy Branch

