



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Sections 44, 45 and 67 for rental loss due to insufficient Notice to End Tenancy; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE

Both parties attended and the tenant agreed that the landlord served the Application for Dispute Resolution personally on her as she exited her workplace. I find that the tenant is served with the Application according to section 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on a balance of probabilities that there was a tenancy and if so, that the tenant gave insufficient notice to end the tenancy causing rental loss? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenant responded to his advertisement for a roommate and visited the unit on November 26, 2013. She agreed verbally to rent it for December 1, 2013 and said she would drop off her cheque later with the concierge. Then she advised him by email on November 30, 2013 that she had changed her mind and would not be renting the unit. He cancelled two other showings in reliance on her commitment. The landlord claims one half of the monthly rent of \$775 and to recover the filing fee. He was able to get another room mate for December 15, 2013. He provided copies of emails and a telephone conversation as evidence.

The tenant agreed with the facts as stated. However, she said that after viewing the unit, she felt very uncomfortable with the situation and decided she did not want to enter

such a tenancy. She contended that there was no tenancy as she had not agreed to terms, had signed no agreement, paid no deposit and had done no condition inspection report.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

The onus is on the landlord to prove on the balance of probabilities that there was a tenancy created and that the tenant caused him rental loss by not taking the unit as promised and giving him insufficient notice to end the tenancy. The tenant relied on the fact that no agreements were signed in writing but did not deny that she had made an oral commitment. In the recent court decision *Darbyshire v. Residential Tenancy Branch (Director)*, 2013 BCSC, Mr. Justice Funt determined that there was no written tenancy agreement and this is required by the statute.

However, section 1 of the Act defines a tenancy agreement as written, oral or implied. I find in this case that there was an oral contract. I find the terms of the contract were certain, that is, \$775 per month plus half of utilities was stated in the advertisement, the tenant responded on November 26, 2013 and viewed the unit; she promised the landlord orally and by email that she would take the unit and drop off a deposit cheque. I find a tenancy contract was created as an offer was made, terms were certain and the offer was accepted by the tenant; I find that changing her mind on November 30, 2013 before paying her deposit did not void her oral contract. I find the landlord relied on her oral agreement and turned away other prospects. I find the landlord mitigated his loss by advertising and renting again as soon as possible. I find by her breach of contract, the tenant caused the landlord to lose one half of one month's rent and utilities (\$387.50+\$25 utilities).

Conclusion:

I find the landlord entitled to a monetary order for \$462.50 which includes the filing fee for this application.

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: February 19, 2014

