



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on June 30, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this tenancy started on November 01, 2011 for a fixed term tenancy that was not due to expire until October 31, 2012. Rent for this unit was \$869.00 per month due on the 1st of each month.

The landlord testified that the tenants did not provide written notice to end the tenancy and were seen removing their belongings from the unit around May 01, 2012. The landlord testified that he regained possession of the unit on May 01, 2012 and re-rented the unit to new tenants on June 01, 2012.

A discussion took place with the landlord concerning the time limit in which the landlord had to file this application. The landlord explained that as the lease did not end until October 31, 2012 and the landlord filed this application on June 22, 2014 the landlord believes he filed within the two year time frame.

Analysis

The *Residential Tenancy Act*: s. 60(1)(2)(3) states that:

Latest time application for dispute resolution can be made

60 (1) *If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.*

(2) Despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

To clarify this I refer the applicant to the *Interpretation Act* s. 25(2)

Calculation of time or age

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

The landlord testified that the tenants vacated the unit on May 01, 2012 and the landlord gained possession of the unit on that date. The landlord also testified that the unit was re-rented on June 01, 2012. Therefore I conclude that the landlord reassigned the tenancy, which had been a fixed term lease until October 31, 2012, to a new tenant on June 01, 2012.

With reference to the above this means that the last day the landlord's application could have been filed should have been June 02, 2014. As the landlord has failed to file this application within the two year time frame allowed under s. 60 of the *Act* I find the claim arising under this *Act* or the tenancy agreement in relation to the tenancy ceases to exist for all purposes.

Conclusion

The landlord's application is dismissed in its entirety 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: October 31, 2014

Residential Tenancy Branch

