



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for: permission to keep all of the Tenants’ security deposit; for unpaid rent, for money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”); and to recover the filing fee from the Tenants for the cost of the Application.

The Landlord appeared for the hearing and provided affirmed testimony. One of the Tenants appeared for the hearing and was supported by her mother who did not testify during the hearing. The other Tenant did not appear for the hearing but was represented by her mother as an agent acting on her behalf. The parties appearing for the Tenants are jointly referred to as the “Tenants” in this decision.

The Tenants acknowledged receipt of the Landlord’s Application which had been served to them by registered mail. The Tenants had submitted written evidence prior to the hearing which they claim was served to the Landlord by registered mail. The Landlord denied receipt of this written evidence prior to the hearing. I explained to the Landlord that the Tenants had submitted a copy of the tenancy agreement and a text message to end the tenancy which the Landlord had already seen. The remaining page of the Tenants’ written evidence was a written account of their argument which I asked the Tenants to explain during the hearing.

As a result, the hearing continued to hear the testimony and submissions of both parties.

Issue(s) to be Decided

- Is the Landlord entitled to keep the Tenant’s security deposit?
- Is the Landlord entitled to a Monetary Order for lost rent for July, 2014?

Background and Evidence

Both parties agreed that this tenancy started on September 1, 2013. A written tenancy agreement was provided in written evidence and shows that rent for the tenancy was payable in the amount of \$1,950.00 due in advance on the last day of the month.

The tenancy agreement shows that the parties entered into a fixed term tenancy agreement for ten months due to expire on June 30, 2014. However, the tenancy agreement does not provide for what is to happen at the end of the fixed term period.

The Tenants provided the Landlord with a security deposit at the start of the tenancy in the amount of \$975.00 which the Landlord still retains.

The Landlord testified that the Tenants had failed to give him 30 days proper notice to end the tenancy and as a result, he has not been able to re-rent his suite for July, 2014. As a result, the Landlord claims loss of rent for July, 2014 in the amount of \$1,950.00. the Landlord requests that he be able to keep the Tenants' security deposit in partial satisfaction of this claim amount and seeks a Monetary Order for the remainder of the his loss.

The Tenants submitted that they were in a fixed term tenancy and therefore there was no requirement for any party to provide any type of written notice to end the tenancy or a period of 30 days. The Tenants submitted that they texted the Landlord on June 11, 2014 to inform him that they would be leaving at the end of June 30, 2014, but this was done only as a courtesy to the Landlord.

The Tenants vacated the rental suite on June 30, 2014 and provided the Landlord with a confirmed forwarding address in writing by July 2, 2014.

Analysis

Firstly, I find that the Landlord made the Application to keep the Tenants' security deposit within the 15 day time limit required by Section 38(1) of the Act.

Section 44(1) of the Act provides the grounds on which a tenancy can be ended.

Section 44(1) (b) provides where a tenancy agreement if a fixed term tenancy that **provides** that the Tenant will vacate the rental unit on the date specified as the end of the tenancy then there would be no requirement for any of the parties to provide notice to end the tenancy. This would be consistent with the Tenants' submissions.

However, in this case, the tenancy agreement provided that was entered into by both parties does **not** specify where the fixed term tenancy ends or continues on a month to month tenancy, and this part of the tenancy agreement was not completed by the parties.

Therefore, Section 44(3) of the Act provides that in this situation, where there tenancy agreement does not specify that a Tenant is required to vacate the rental unit, the Landlord and Tenant have deemed to have renewed the tenancy agreement as a month to month tenancy. This means that the tenancy agreement was a periodic tenancy, a portion of which was a fixed term and therefore, the Tenant would have been required to follow Section 45(2) of the Act.

Section 45(2) of the Act and Policy Guideline 30 to the Act on fixed term tenancies explains that if a Tenant wishes to vacate the premises at the end of the fixed term, but is not otherwise required to vacate the premises at the end of the fixed term, the Tenant must give notice of intent to vacate the premises in the rental period prior to the rental period in which the Tenant wishes to vacate the premises and not less than one month prior to the end of the fixed term.

Therefore, in order to end the tenancy on June 30, 2014, the Tenants would have had to give proper notice to end the tenancy to the Landlord by May 30, 2014 (the day before rent was due).

Section 52 of the Act sets out the requirements of the content of a notice to end the tenancy given by a Tenant to the Landlord. Such a notice to end the tenancy needs to be signed by the Tenant, give the address of the rental unit and give the effective date of the notice. This formal legal notice should not be served by text message.

Policy Guideline 3 to the Act provides that in these cases, the Landlord would be entitled to sufficient compensation equating to the earliest time the Tenant could have legally ended the tenancy. Therefore, if the Landlord was provided notice to end the tenancy on June 11, 2014 and therefore, the earliest time the Tenants could have legally vacated the rental unit would have been at the end of July, 2014.

However, Policy Guideline 3 to the Act requires that in all cases, the Landlord's claim for lost rent is subject to the statutory duty under Section 7(2) of the Act to mitigate the loss by re-renting the premises.

The Landlord provided no documentary evidence in advance of the hearing to support his oral evidence that he tried to re-rent the rental suite for July, 2014 and I find that as

the Landlord was given notice in early June, 2014, the Landlord still had time to re-rent it for a period of July, 2014. As a result, taking into consideration the breach of the Act by the Tenants, I am only willing to award the Landlord two weeks loss of rent for July, 2014 as the Landlord has failed to prove that he mitigated his loss.

Therefore, I find that the Landlord is entitled to lost rent for two weeks of July, 2014 in the amount of \$975.00.

As the Landlord has been successful in his claim, I also grant the Landlord the \$50.00 filing fee for the cost of having to make the Application.

Conclusion

For the reasons set out above, the Landlord is granted permission to retain the Tenants' security deposit in the amount of \$975.00.

I also issue the Landlord with a Monetary Order in the amount of \$50.00 pursuant to Section 72(1) of the Act, for the recovery of the filing fee. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) 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: November 12, 2014

Residential Tenancy Branch

