



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

During the hearing the tenants testified they felt that landlords were too late in filing their claim against the tenants because that had not done so within 15 days of the end of the tenancy and receipt of the tenants' forwarding address.

That matter was adjudicated in a hearing between the parties held on February 2, 2015. In that hearing and the decision that followed it, dated February 3, 2015, the issue before the Arbitrator was whether or not the landlords had failed to return the security deposit within the 15 days required under Section 38 of the *Residential Tenancy Act (Act)*.

I explained that this hearing was based on the landlords' Application for Dispute Resolution seeking compensation for a loss they feel they suffered as a result of the tenancy and it had no relation to the return of the security deposit. I note that Section 60 of the *Act* stipulates that a party to a tenancy has up to 2 years to file a claim against the other party.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlords submitted into evidence a copy of a tenancy agreement signed by the parties on January 2, 2012 for a 1 year and 1 day fixed term tenancy beginning on February 1, 2012 that converted to a month to month tenancy on February 2, 2013 for a monthly rent of \$1,500.00 due on the 1st of each month.

The parties agree the tenants provided the landlord with notice by email on August 11, 2014 and later by hardcopy in their mailbox which they received when they returned from vacation. The parties agree the tenants provided the landlord with \$750.00 for ½ month's rent.

The tenants submit that they gave the landlord at least 30 days' notice when they provided the email on August 11, 2015.

Analysis

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As I heard no evidence that the landlord's had breached a material term I find the tenants were required to provide notice of their intent to end the tenancy that would be compliant with Section 45(1).

As such, and per the tenancy agreement I find that since rent was due on the 1st of each month the earliest the tenants could have ended their tenancy based on a notice issued by them on August 11, 2015 was September 30, 2015. As such, I find the tenants are responsible for the payment of rent until September 30, 2015 even though they moved out of the rental unit prior to this date.

Conclusion

I find the landlords is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$800.00** comprised of \$750.00 rent owed and the \$50.00 fee paid by the landlords for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 15, 2015

Residential Tenancy Branch

