



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with his application for dispute resolution hearing package ("Application") by way of registered mail to his employment address. The landlord confirmed that he was permitted to serve the tenant at his employment address pursuant to a substituted service decision and order, dated August 17, 2015, made by another Arbitrator of the Residential Tenancy Branch ("RTB"). The tenant confirmed receipt of the landlord's Application. In accordance with sections 71 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

The tenant confirmed that he served evidence to the RTB but not to the landlord. I advised the tenant that I had not received his evidence. The tenant did not provide documentary proof of service. In any event, I advised the tenant that as he had not served the landlord with his evidence, as required by Rule 3.1 of the RTB *Rules of Procedure*, I could not consider his evidence at this hearing or in my decision.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord testified that he personally rents a two bedroom condominium from the landlord-owner. The landlord occupies one room and sublets the other room to the

tenant in this Application. The landlord confirmed that he had written permission from his landlord to sublease the room to other tenants. The landlord confirmed that he had an option to buy the condominium from his landlord and he has exercised this option, which will take effect on November 1, 2015.

Both parties agreed that no written tenancy agreement exists for this tenancy. The landlord testified that this month-to-month tenancy began in the first week of November 2013 and ended in March 2014. The tenant testified that the tenancy began around December 1, 2013 and ended on January 31, 2014. The tenant confirmed that he paid a security deposit for a new rental unit on February 1, 2015.

The landlord confirmed that monthly rent in the amount of \$1,500.00 was payable on the first day of each month. The landlord stated that rent would normally be \$3,000.00 per month but he reduced it because the tenant would leave the unit temporarily to allow for other occupants to temporarily occupy the unit for a higher rent. The landlord indicated that the tenant had the option to stay in the unit and pay additional rent to the landlord, to make up for the difference between the higher rent being offered by the other occupants.

The tenant stated that no specific amount was determined for monthly rent. The tenant confirmed that he only lived in the rental unit for about five weeks total between December 2013 and January 2014. The landlord confirmed that the tenant lived in the rental unit for at least 50% of the time period during the tenancy. The tenant stated that other occupants were residing in the rental unit during certain time periods, while the tenant had to find alternate accommodations and pay rent there. The tenant indicated that he paid rent of approximately \$400.00 to \$450.00 per week at other locations and based on this rate, the tenant stated that he should only owe rent of \$400.00 per week for a period of 5 weeks to the landlord. The landlord maintained that the tenant owes \$7,500.00 for rent, based on \$1,500.00 per month for five months between November 2013 and March 2014.

Analysis

Section 4(c) of the *Act* excludes tenancies where the owner of the accommodation and the tenant share bathroom and kitchen facilities. Despite the fact that the landlord and tenant share the kitchen and bathroom in this rental unit, the landlord is not yet the owner of the rental unit, as this will be effective on November 1, 2015 after this hearing date. Therefore, this tenancy is not excluded by section 4(c) of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Residential Tenancy Regulation* ("*Regulation*") or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Both parties agreed that a verbal tenancy agreement was created and the tenant owes rent for renting the unit from the landlord. The length of tenancy is under dispute. The landlord was unsure of when the tenant began occupying the rental unit, indicating that he had a message from the tenant to meet him on November 7, 2013. Therefore, the tenant was likely not occupying the rental unit before this date. The tenant stated that he began his tenancy around December 1, 2013. The landlord has the burden of proof, on a balance of probabilities, to prove the length of tenancy and the amount of rent due. The landlord was unable to prove the exact start date, while the tenant disputed his evidence. Accordingly, I accept the tenant's date of December 1, 2013 as the start of the tenancy, as the landlord's own evidence shows that the tenancy began sometime after November 7, 2013.

The landlord was unsure of when the tenant vacated the rental unit, indicating that he was travelling during that time. The tenant confirmed that he paid a security deposit for another unit on February 1, 2014. It is the landlord's burden of proof to confirm the end date of tenancy, while the tenant disputed the landlord's evidence. Therefore, I accept the tenant's testimony that the tenancy ended on January 31, 2014.

The amount of rent is also under dispute. I accept the landlord's sworn testimony that rent was \$1,500.00 each month. I do not find it plausible that the tenant agreed to rent the unit without knowing or determining the amount of monthly rent, beforehand. Further, the tenant lived in the rental unit for at least two months, by his own testimony, and would not have done so without knowing the amount of rent that would be due. I do not accept the tenant's valuation of rent, which is simply based on an estimate of his experience at other rental units during that time.

I accept the landlord's evidence that the monthly rent was reduced to account for the fact that the tenant would only be occupying the rental unit temporarily, which the tenant agreed to do. The landlord stated that the rent was reduced from \$3,000.00 to \$1,500.00 which is a 50% reduction. The landlord stated that the tenant probably resided in the rental unit for 50% of the time, as he was personally living there during this time, with the exception of when he was travelling. The tenant estimated five weeks

between December 2013 and January 2014. As the above two-month time period had approximately nine weeks total and the tenant claims to have lived there for about five weeks, this is just over 50%. Therefore, I find that the above rent reduction accounts for this reduced time period of living in the rental unit. I find that no further reduction in the \$1,500.00 rent is required.

Therefore, I find that the tenant owes \$1,500.00 for occupying the rental unit from December 1, 2013 until January 31, 2014. Accordingly, I find that the landlord is entitled to \$3,000.00 total in unpaid rent from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,000.00 against the tenant. The landlord is provided with a monetary order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: October 27, 2015

Residential Tenancy Branch

