



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

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

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on January 1, 2013 but that the tenants moved into the unit in December 2012. The parties agree the tenancy was a month to month tenancy for a monthly rent of \$750 due on the 1st of each month with a security deposit of \$375.00 and a pet damage of \$375.00 paid.

The parties also agreed that in the month of March 2015 the tenants paid rent in the amount of \$400.00 and applied one of the deposits against the balance of March 2015 rent.

The landlord submits the tenants failed to pay rent for the month of June 2015. He stated that he was away from June 10, 2015 and did not return until July 7, 2015. The landlord testified that he had attempted to phone the tenants when he returned but he could not reach them because they still had not paid June or July 2015 rent.

The landlord submits that he attended the property and found, by looking in the windows, that the tenants' furniture was still there. He states he was never able to contact the tenants and that on July 19, 2015 one of the neighbours of the rental unit contact him and advised him that the tenants had moved out that weekend. The landlord did not present the neighbour as a witness nor did he provide any written statement from the neighbour.

The landlord submits that the tenants did not provide any written notice other than the one he submitted into evidence that he received after he confirmed the tenants had moved. He also testified that he was not able to find new tenants for the month of August 2015.

The tenants agreed that they had not paid rent for the month of June 2015. They stated, however, that they vacated the rental unit before the end of June and had left their notice in the rental unit.

Analysis

Based on the testimony of both parties I accept the tenants failed to pay rent for the month of June 2015.

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 there was no evidence before me that the tenants had notified the landlord of a breach of a material term as per Section 45(3) I find the tenants were required to provide the landlord with written notice in compliance with Section 45(1).

From the landlord's evidence, I find the tenants did provide a written notice that was undated. However, it is not sufficient to simply leave the notice in the rental unit to provide notice that is compliant with Section 45(1). As noted above Section 45(1) requires the effective date to be not earlier than one month after the date the landlord **receives** the notice.

Section 88 of the *Act* outlines that all documents that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) By leaving a copy with the person;
- (b) If the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) By sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) If the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) By leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) By leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) By attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) By transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) As ordered by the director.

I find that by the tenants leaving their notice in the rental unit instead of serving it by one of the allowable methods the tenants took a chance on when it might be received by the landlord. In addition, I am satisfied that the tenants were aware the landlord was away during the last part of the month of June 2015.

As such, I accept that the landlord did not receive the tenants' notice until July 2015. As a result, I find the earliest effective date the tenants could end the tenancy was August 31, 2015. As a result, I find the tenants are responsible for the loss revenue suffered by the landlord for the months of July and August 2015.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,300.00** comprised of \$2,250.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$375.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,925.00**. 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: December 11, 2015

Residential Tenancy Branch

