



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

On August 10, 2015, the landlord filed an Application for substituted service. On August 11, 2015, I granted the landlord’s application, which should be read in conjunction with this decision. I have noted the file number on the covering page of this decision.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by email, as directed by my decision of August 11, 2015. Filed in evidence is a copy of the email sent to the tenant.

The landlord testified that the tenant also responded to the email, sent.

I find that the tenant has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

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

Background and Evidence

The parties entered into a fixed term tenancy agreement on June 24, 2015, which was to begin on August 1, 2015, and expire on August 1, 2016. Rent in the amount of

\$1,850.00 was payable on the first of each month. Filed in evidence is a copy of the agreement.

A move-in condition inspection report was completed on July 28, 2015, and the tenants were give possession of the rental unit.

The landlord stated that they receive a message shortly after the condition inspection reports was signed that they were not moving into the rental unit and are cancelling the tenancy. The landlord stated that the tenant also cancelled the email transfer for the rent and Deposits. The landlord seeks to recover unpaid rent for August 2015, in the amount of \$1,850.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, I accept the evidence of the landlord's that the tenant breached the fixed term agreement, when they informed the landlord that they would not moving in and cancelled the email transfer for August 2016, rent.

However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was August 1, 2016, as stated in the tenancy agreement.

Since the tenant failed to comply with the Act, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

I find that the landlord has established a total monetary claim of **\$1,900.00** comprised of unpaid rent for August 2016 and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 of the

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The landlord is granted a monetary order

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: March 04, 2016

Residential Tenancy Branch

