



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1650 for the failure to give sufficient notice.
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where they reside on September 11, 2015. With respect to each of the applicant's claims I find as follows

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2011, continue for one year and become month to month after that. The rent was \$1600 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$800 at the start of the tenancy.

The tenant(s) gave oral notice in late November that they were vacating on December 31, 2013. The tenants vacated on that date. The landlord re-rented the rental unit with the new tenants taking possession on February 7, 2014.

The landlords live out of town. There is a dispute between the parties as to whether the landlord sufficiently attempted to contact the tenants.

The tenants have obtained a monetary order in the sum of \$1650 for double the security deposit.

Analysis - Monetary Order and Cost of Filing fee:

Section 45(1) and (4) of the Residential Tenancy Act provides as follows:

Tenant's notice

45 (1) A tenant may end a periodic 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

...

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

After carefully considering all of the evidence I determined the tenants failed to provide notice in writing as required by section 45(1) and 52 of the Residential Tenancy Act. As a result I determined the landlords are entitled to the rent for January 2014 in the sum of \$1600. For the tenants to end the tenancy by notice, it would have been necessary for the tenants to give the landlord written notice as set out in section 52 prior to the end of November. There is a dispute between the parties with the tenants alleging that the landlord failed to make reasonable efforts to contact them in January 2014. However, this is not relevant to whether proper notice was given by the end of November 2013.

I have considered the issue as to whether the landlords have failed to mitigate their loss. The obligation to mitigate was triggered on December 31, 2013 when they became aware the tenants vacated. The landlords live out of town. While the landlords did not take steps to re-rent the rental unit until the middle of January, the evidence indicates that it is unlikely the rental unit could have been re-rented for January 1, 2014.

As a result I ordered that the Tenants pay to the Landlord the sum of \$1600 plus the sum of \$50 in respect of the filing fee for a total of 1650.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: March 10, 2016

Residential Tenancy Branch

