



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNR

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of their deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenants. The landlord did not submit any documentation for this hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on December 1, 2015 and ended on February 10, 2016. The tenants were obligated to pay \$1250.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$625.00 security deposit. The landlord stated that he received a text message on January 2, 2016 from the tenant advising that he would be moving out by January 31, 2016. The landlord stated that the tenant cut off communication and did not return the keys and fob until February 10, 2016. The landlord stated that the tenant refused to provide his forwarding address until he was served with the tenants' application for dispute resolution. The landlord stated that he is amending his application and only seeks the loss of rent for February and the filing fee for a total claim of \$1300.00.

The tenant's testimony is as follows. The tenant stated that he sent the landlord a text message on December 30, 2015. The tenant stated that he has lived in Canada for ten years and has never given written notice when moving out of a suite. The tenant stated that he tried to return the keys to the landlord many times but wasn't able to get a hold

of him. The tenant feels that he gave sufficient notice and that he requests the return of his deposit.

Analysis

Section 45 and 52 of the Act addresses the issue before me 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.

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.

In the tenants own testimony he acknowledges that he did not give written notice. In addition, the landlord stated that he was out of the country at the time the tenant sent the text and that he did not receive it until he returned to the jurisdiction on January 2, 2016.

I find the notice to end tenancy was not served in time, nor was it in a form that was in accordance with the Act. In addition, the tenant did not return the keys or fob back to the landlord until February 10, 2016 thus maintaining possession of the unit past the date he advised he would move out by. Based on the above I find that the tenant is responsible for the rent due for February 2016 and the landlord is entitled to \$1250.00.

The landlord is also entitled to the recovery of the \$50.00 filing fee.

Conclusion

The landlord has established a claim for \$1300.00. I order that the landlord retain the \$625.00 security deposit partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$675.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety.

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: April 12, 2016

Residential Tenancy Branch