



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, 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 landlords

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 19, 2016 in accordance with Section 89. The landlord testified that the delivery was confirmed by Canada Post as been made on April 21, 2016 and that it was signed for by the tenant.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for a late fee; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 16, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on March 30, 2016 for a month to month tenancy beginning on April 1, 2016 for the monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid. The tenant agreement included an addendum that included a late payment clause requiring the tenant to pay \$25.00 for late rental payments.

The landlord submitted the tenant had paid the security deposit and ½ month rent for April. The landlord submitted copies of email correspondence between the parties in which the tenant indicates she cannot now get the 2nd half of the rent and won't be moving in.

The landlord submitted that he was not able to re-rent the unit until June 1, 2016.

Analysis

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

As such, in the case before me, I find the tenant, once she entered into the tenancy agreement was required to give notice to the landlord of her intent to end the tenancy that complies with the *Act*.

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 is no evidence before me that the tenant found a breach of a material term on the part of the landlord I find the tenant would have had to give the landlord notice to end the tenancy in accordance with Section 45(1).

As the tenant did not advise the landlord until into the month of April 2016 that she would not be continuing the tenancy I find the earliest the tenant could have ended the tenancy was May 31, 2016 to be compliant with Section 45(1). As such, I find the landlord is entitled to compensation for unpaid rent in the amount of \$1,600.00 for the months of April and May 2016, less the amount received by the landlord for rent for the month of April.

I find the landlord is also entitled to compensation in the amount of \$50.00 for late fees for each of these two months.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,350.00** comprised of \$1,200.00 rent owed; \$50.00 in late fees and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$950.00**. This order must be served on the tenant. If the tenant fails 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: September 21, 2016

Residential Tenancy Branch