



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANTAGE WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

Both parties attended the hearing and gave sworn testimony. They agreed that the tenant gave Notice to End their tenancy by email on September 2, 2016 and vacated September 30, 2016. The tenants agreed they received the landlord's Application for Dispute Resolution by registered mail. I find that the tenant is served with the Application according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 45 and 67 for unpaid rent due to insufficient notice to end tenancy;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant gave short notice to end the tenancy contrary to the Act and they are entitled to recover one month's rent? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced June 15, 2016 on a month to month lease, that monthly rent was \$2500 and a security deposit of \$1250 was paid in June 2016. It is undisputed that the tenants called and gave Notice to End their tenancy by email dated September 2, 2016 and vacated on September 30, 2016. They said they contacted the agent on September 2, 2016 to ask if it was okay to end their tenancy. The agent was to contact the owner but she never replied. The agent said she had difficulty contacting the owner.

The landlord claims one month's rent due to the short notice to end the tenancy. However, they are willing to waive half of one month's rent and limit the claim to \$1250 which is the amount of the security deposit. They also claim the filing fee.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

Section 45 of the Act provides a tenant may end a periodic tenancy by giving a 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 that rent is payable under the tenancy agreement.

As pointed out in the hearing, a notice to end tenancy given in September would not have been effective until October 31, 2016. Although the tenants contended the landlord did not reply to tell them it was okay to end the tenancy on short notice, I find this does not negate their legislated obligations to provide a full month's notice. The Act is in the public domain and persons are expected to know it. As I told them in the hearing also, email is not considered a legal method of service so they are advised to consult sections 88 and 89 of the Act regarding legal service for notices in future tenancies. I find the landlord is willing to waive any rent claim in excess of \$1250. Therefore, I find the landlord entitled to recover \$1250 towards the cost of lost rent in October due to short notice.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss as claimed due to short notice	1250.00
Filing fee	100.00
Less security deposit	-1250.00
Total Monetary Order to Landlord	100.00

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 25, 2017

Residential Tenancy Branch