



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 was convened by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

Both landlords and the tenant attended the hearing, and one of the landlords and the tenant gave affirmed testimony. The parties were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlords withdrew the application for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit.

Issue(s) to be Decided

The issue remaining to be decided is:

- have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this 1 year fixed term tenancy began on December 5, 2009 and reverted to a month-to-month tenancy, which ultimately ended on or about November 28, 2016. Rent in the amount of \$1,005.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$475.00 which was returned in full to the tenant. The rental unit is a basement apartment, and a written tenancy agreement exists but a copy has not been provided for this hearing.

The landlord further testified that the rental unit had sold and the landlords thought they were doing the tenant a favour giving as much advance notice as possible, and told the tenant he would be required to provide vacant possession in February, 2017. The landlords didn't get a chance to serve a 2 Month Notice to End Tenancy for Landlord's Use of Property, which they intended to do before December 1, 2016 effective January 30, 2017, because the tenant sent an email to the landlords stating that he was vacating on December 4, 2016. A copy has been provided and it is dated November 4, 2016.

The tenant paid rent for November, but not for December, 2016 and the landlords seek a monetary order for one month's rent of \$1,005.00 and recovery of the \$100.00 filing fee.

The tenant testified he received mail from the landlords saying they had sold the rental unit and the tenant would have to vacate by February 1, 2017. The tenant needed to find a home, and in the present housing market, the tenant found a home and moved into it. Since the tenant had moved in on the 15th of the month, not the 1st of the month, the tenant thought he had given appropriate notice to the landlords.

When asked if rent was payable on the 1st day of each month, the tenant responded that he just paid rent on the 1st.

The tenant moved out on November 30 and returned the keys to the landlords on December 1, 2016.

Analysis

The *Residential Tenancy Act* specifies how a tenancy ends. Had the landlords served a 2 Month Notice to End Tenancy for Landlord's Use of Property, which is an acceptable method of ending the tenancy, certain rules would apply. Firstly, the purchaser would have to give a request in writing for the landlord to end the tenancy; the purchaser must have an honest intent to live in the rental unit; the landlord would have to give the notice prior to the day rent is payable; the effective date of vacancy must be no less than 2 months after it is served; and the tenant must be compensated the equivalent of 1 months rent. Further, if the tenant finds a place sooner, the tenant may give 10 days written notice to the landlords; pay rent to the date of vacancy; and the landlord is still compensated the equivalent of 1 months rent. However, none of that applies unless the landlord actually serves a 2 Month Notice to End Tenancy for Landlord's Use of Property. Since the landlords did not do so, the tenancy may end by the tenant giving no less than 1 months notice to the landlords and must give it the day before rent is payable.

The parties agree that rent is payable on the 1st day of the month. Therefore, I find that the tenant has not given appropriate notice to end the tenancy, and did not dispute the landlord's testimony that rent for December, 2016 was not paid. Therefore, I find that the landlords have established a monetary claim in the amount of \$1,005.00.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,105.00.

This order is final and binding and may be enforced.

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: June 06, 2017

Residential Tenancy Branch