



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks monetary order in the sum of \$1006.56 for reimbursement of rent paid.

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.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the respondent by mailing, by registered mail to where the respondent resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much.

Background and Evidence

The tenancy began on August 28, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$1300 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$600 and a pet damage deposit of \$600 at the start of the tenancy. The two deposits have been returned to the Tenant.

The landlord applied for an early end to the tenancy. The hearing was held of February 16, 2017. A decision was rendered by the arbitrator on February 26, 2017 for an early end to the tenancy and granting an immediate Order of Possession.

The tenant testified she received this by e-mail on February 26, 2017. She was not able for find movers and as a result was not able to move out until March 6, 2017. The landlord cashed her rent cheque for March 2017. The tenant seeks reimbursement of the rent for the period March 7, 2017 to March 31, 2017 in the sum of \$1006.56.

The tenant testified the bylaw officer for the municipality advised her that it was illegal for the landlord to rent the rental unit to anyone other than a hired hand as it is on agricultural land.

Analysis

The landlord submitted the tenant's application should be dismissed because the tenant failed to file the application within 3 days of receipt. The hearing letter is dated March 22, 2017. There is a Registry date stamp on the document indicating it was receipted on March 23, 2017. The Canada Post Tracking service indicates the Application for Dispute Resolution/Notice of Hearing was mailed on April 1, 2017. It was received by the landlord 4 days later.

The representative of the landlord acknowledges the landlord has not been prejudiced by this delay in preparing for this hearing. After considering all of the evidence I determined it was appropriate to grant the tenant an extension of time to serve the Application for Dispute Resolution. The landlord has not been prejudiced. To dismiss the tenant's application of technical grounds would result in further delays as the tenant would have been given the right to re-apply in order for the dispute to be determined on its merits.

I determined the tenancy ended on February 26, 2017 when the landlord served the immediate Order of Possession. At that time the landlord lost the right to cash the rent cheque for March although the landlord did have the right to recover "use and occupancy" rent for the period of time the tenant remained in the rental unit. The tenant vacated on March 6, 2017. Further, the landlord did not have the legal right to rent the rental unit as the rental of the unit to anyone other than a hired hand was contrary to municipal bylaws. I determined the tenant is entitled reimbursement of the rent for the period March 7, 2017 to March 31, 2017 in the sum of \$1006.56. .

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1006.56.

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 final and binding on the parties.

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: August 21, 2017

Residential Tenancy Branch