



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed and to recover the filing fee from the landlord.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 23, 2018, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

The tenant appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order for money owed?

Background and Evidence

The parties entered into a fixed term tenancy which began on June 1, 2018 and was to expire on May 31, 2018. Rent in the amount of \$1,995.00 was payable on the first of

each month. The parties entered into a mutual agreement to end the tenancy on December 31, 2018. Filed in evidence are copies of the above documents.

The tenant testified that they prepaid the landlord the rent for the entire fixed term agreement in the total amount of \$24,000.00. The tenant stated that they rounded up the rent when issuing the landlord a bank draft on May 1, 2018. Filed in evidence is a copy of the bank draft.

The tenant testified that at the end of the tenancy the landlord was required to return the prepaid rent from January 2019 to May 2019 for a total amount of \$10,000.00. The tenant stated that the landlord's father FS gave them \$5,000.00 towards the money owed. The tenant seeks to recover the balance of prepaid rent owed in the amount of \$5,000.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Residential Tenancy Regulation scheduled 5(4) stated that the landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. I find this would also include any advance payment of rents.

The tenancy commenced on June 1, 2018. The parties entered into a mutual agreement to end the tenancy effective on December 31, 2018.

The tenant prepaid twelve (12) months of rent to the landlord in the sum of \$24,000.00, reducing that amount by \$14,000.00, which represents seven (7) months of rent the tenant was required to pay. This leaves a balance of prepaid rent in the amount of \$10,000.00 that the landlord must return to the tenant.

The landlord's father paid the tenant the sum of \$5,000.00, leaving a balance of prepaid rent owed to the tenant in the amount of \$5,000.00. I find the landlord has failed to comply with the Residential Tenancy Regulations. I find the tenant is entitled to recover the prepaid rent from the landlord in the amount of **\$5,000.00**.

Therefore, I find the tenant has established a total monetary claim of **\$5,100.00**, comprised of the above described amount and the \$100.00 cost of the filing fee.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant is granted a monetary order in the above noted amount.

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: January 09, 2019

Residential Tenancy Branch