



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MDSD & FF

Introduction

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 sufficiently served on the Tenant. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant rented the rental unit from a previous owner in 2009. She paid a security deposit of \$650 on April 1, 2009. The present applicant purchased the property in 2013. He testified he entered into a tenancy agreement with the respondent on October 1, 2013. The rent is \$1300 per month payable in advance on the first day of each month.

The tenant failed to pay the rent for April and the landlord served a 10 day Notice to End Tenancy on the Tenant. On April 4, 2014 the tenant e-mail the landlord advising the landlord that she would be vacating the rental unit on May 1, 2014.

The tenant vacated the rental unit on May 1, 2014. She returned the keys on May 3, 2014. The landlord testified he was not able to rent the rental unit for May and June. He further testified he sold the rental unit in July. He testified that he attempted to rent the rental unit by word of mouth with neighboring landlords. He did not advertise the rental unit was for rent.

A hearing was held on June 2, 2014. The tenant's application to cancel the 10 day Notice was dismissed as she had vacated the rental unit. The landlord's application was dismissed with liberty to re-apply as he had not served the tenant.

The Law:

Section 45(1) of the Residential Tenancy Act provides as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the 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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7(2) of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

- 7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Analysis - Monetary Order and Cost of Filing fee

I determined the landlord has established a claim against the tenant in the sum of \$1300 for non-payment of the rent for April. The tenant resided in the rental unit during that period and is responsible to pay the rent. I do not accept the tenant's submission that she is entitled to one month free rent because the landlord sold the rental unit. The landlord's obligation to pay one month free rent is triggered only when the landlord serves a 2 month notice. That never occurred. Secondly, the rental unit was sold after the end of the tenancy.

The landlord claims the sum of \$1300 per month for loss of rent for May and June for a total of \$2600. The tenant is obligated under section 45(2) to give the landlord a clear month notice. She failed to do so when she gave notice on April 4, 2014 that she was vacating on May 1, 2014. However, once she vacated the rental unit the landlord is under a legal duty to do all that is reasonable to minimize his loss. I determined the landlord failed to do all that was reasonable to minimize his loss as he failed to advertise the rental unit and failed to keep the grass cut. He limited his efforts to word of mouth only which in my view is not sufficient.

In the circumstances I determine the landlord is entitled to half of a month rent or the sum of \$650. The tenant had filed an application to cancel the 10 day Notice in early April and it would not be reasonable to expect the landlord to advertise that the rental unit was available on May 1, 2014. However, the landlord's effort to attempt to rent the premises after the tenant vacated was lacking and he is not entitled to the full month rent for May. For the same reasons I dismissed the landlord's claim for loss of rent for June.

In summary I granted the landlord a monetary order in the sum of \$1950 plus the sum of \$50 in respect of the filing fee for a total of \$2000.

Security Deposit

I determined the security deposit plus interest totals the sum of \$650. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1350.

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 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 14, 2014

Residential Tenancy Branch

