



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent and recovery of the filing fee for the cost of the application.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

On April 30, 2008 the landlord served the tenants with a two month notice to end tenancy for landlord's use, in which the landlord indicated that he was putting the rental unit up for sale. The effective date of the notice was June 30, 2008. The tenants asked the landlord why he was selling and for what price, and the tenants then expressed an interest in purchasing the unit themselves. The tenants were planning to buy the unit but their plans fell through. Some friends of the tenants ultimately became the purchasers of the unit, and the sale was completed on July 2, 2008. The landlord agreed with the purchasers that he would collect July's rent of \$800 from the tenants. The landlord submitted as evidence a copy of the Vendor's Statement of Adjustments, which indicates a deduction in the purchase price in the amount of \$774.19, reflecting the purchaser's portion of rent for July 2 to July 31, 2008. The tenants provided the landlord with a cheque for \$800 for July's rent, but then they put a stop payment on the cheque because they believed they were entitled to one month of free rent because of the two month notice. On July 10, 2008 the landlord gave the tenants a letter informing

them that the notice to end tenancy has been rescinded and the rent they owed for July 2008 was now due and payable. The tenants refused to pay the outstanding amount. The tenants entered into a new tenancy agreement with the new owners beginning July 2, 2008. The landlord claims \$800 in outstanding rent for July 2008.

Analysis

Under section 51 of the Act, a tenant who receives a notice to end tenancy for landlord's use is entitled to receive from the landlord on or before the effective date of the notice an amount equivalent to one month's rent. A landlord or tenant cannot unilaterally withdraw a notice to end tenancy, but the notice can be waived by express or implied consent of both parties. In this case, I find that by their actions of planning to purchase the unit, and then entering into a new tenancy with the new owners, the tenants have by implied consent waived the notice to end tenancy. Therefore, the tenants are not entitled to one month's free rent, and they owe the outstanding rent for July 2008 to the landlord in the amount of \$800. The landlord is also entitled to recovery of the \$50 filing fee.

Conclusion

I grant the landlord an order under section 67 for the balance due of \$850. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 24, 2008.