



Dispute Resolution Services

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

Decision

Dispute Codes: MNR MNSD OPB FF

Introduction

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application for an Order of Possession and for a monetary order totaling \$1095.29 and a request to keep the security deposit towards the claim.

Background and Evidence

The landlord stated that they no longer require an Order of Possession because the tenant vacated; however the landlord testified that the tenant vacated without giving the required written Notice to End Tenancy and as a result the landlords lost the full January 2009 rental revenue and had advertising costs to re-rent the unit.

The tenant testified that she moved out because the landlord gave her a 10 Notice to End Tenancy for non-payment of rent and although she paid the rent the same day and voided the Notice to End Tenancy, she did not want to stay and therefore gave the landlords verbal notice that she would be moving out at the end of December 2008.

The tenant also testified that the pipes froze in the rental unit in December 2008 and she did not have any water in the kitchen for about a week and therefore she believes she had the right to move out due to the loss of use of the kitchen.

Analysis

If a tenant fails to pay the rent when it is due the landlord can, on the day after the rent was due, give a 10 day Notice to End Tenancy. In this case the landlord gave the Notice to End Tenancy prematurely as it was given on the due date; however it is a mute point as the tenant paid the full rent on the same day that she got the Notice to End Tenancy and thereby voided the notice.

If either the landlord or the tenant wanted to end the tenancy after the 10 day Notice to End Tenancy was voided, they would had to have given **written** Notice to End Tenancy as required under the Residential Tenancy Act.

In this case the tenant failed to give a written Notice to End Tenancy and instead gave a verbal Notice to End Tenancy for the end of December 2008; however a verbal Notice to End Tenancy is not a valid notice and therefore the tenant did not give valid notice to end this tenancy at the end of December 2008.

Having frozen kitchen water lines was also not a valid reason to end this tenancy. I agree that the tenant suffered some inconvenience and loss of use; however the problem was eventually rectified and the tenancy could have continued.

Therefore the tenant is liable for any loss or expense incurred by the landlords as a result of her improper Notice to End Tenancy.

In this case the landlords lost the full rental revenue of \$975.00 for January 2009 and had advertising costs of \$70.29 to try and re-rent the unit, for a total of \$1045.29

Conclusion

It is my decision that I allow the landlords full claim of \$1045.29. I further ordered that the respondent bear the \$ 50.00 cost of the filing fee paid for this hearing.

Total amount allowed-----\$1095.29

I therefore order that the landlord(s) may retain the full security deposit plus interest:

\$ 452.43

I further Order that the Respondent(s) pay to the applicants the following amount:

\$ 642.86

Dated: January 29, 2009