



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNR, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the landlords' application for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of this application.

One of the named landlords and one of the named tenants attended the conference call hearing on May 30, 2011, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The landlord provided an evidence package in advance of the hearing to the Residential Tenancy Branch and to the tenant which was not received within the time required in the *Residential Tenancy Act* and Rules of Procedure. The tenant did not agree to the inclusion of that evidence, and that evidence is not considered in this Decision.

The hearing did not conclude on May 30, 2011 and reconvened on June 23, 2011 at 11:00 a.m. The parties were also directed to provide any evidence that they wished to rely on to the Residential Tenancy Branch and to each other, and that such evidence, in order to be considered, must be received by no later than June 16, 2011. The landlord attended the conference call hearing again on June 23, 2011, however the tenant did not attend.

All evidence, with the exception of the late evidence provided by the landlord for the hearing on May 30, 2011, and the testimony provided by the parties have been reviewed and are considered in this Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary order for unpaid rent or utilities?

### **Background and Evidence**

This month-to-month tenancy began on or about September 1, 2009, although the tenant may have moved into the rental unit about a week prior, and the tenants still

reside in the rental unit. No written tenancy agreement had been prepared. The rental unit is a house with 3 suites, and the rental unit that is the subject of this dispute is a 3 bedroom unit wherein the 3 bedrooms are rented as a shared dwelling.

The landlord testified that her father owns the home and she manages the rentals. Neither of them currently reside in the home but at one time the landlord manager lived there.

The landlord also testified that a hearing was conducted by a Dispute Resolution Officer on January 21, 2010 wherein an Order of Possession was obtained by the landlord by consent of the parties effective May 31, 2010, but the tenants did not move out and the landlords did not have the financial means to have a Court Bailiff remove the tenants. Further ordered was a monetary order in the amount of \$1,050.00 that was to cover rent for the unpaid balance of rent for November, 2009 and for the months of December, 2009 and January, 2010, at \$500.00 per month and \$50.00 for the cost of filing the application. She further testified that at the hearing on January 21, 2010 the parties agreed that the rent was \$650.00 per month for the months of February through May, 2010 and then the tenants would move out. The tenants did not pay the \$1,050.00, but paid rent in the month of February, 2010. No rent has been paid since. The landlord requests a monetary order in the amount of \$25,000.00 for unpaid rent.

The tenant testified that the wife of the landlord (owner) had contacted the tenants prior to May, 2010 asking them to stay in the rental unit. She stated that a trust had been set up for the landlord and on December 1, 2010 the tenants paid \$7,800.00 to another tenant who had been appointed the manager by the landlord's wife. That tenant also created a tenancy agreement between himself with the owner and the two named tenants, a copy of which was provided. During cross examination, it was determined that the tenant who created the tenancy agreement may have done so without the authorization of the landlord, and that tenant is now deceased. The tenant testified that she gave the \$7,800.00 to him and he provided a receipt, a copy of which was provided in advance of the hearing. The receipt also states that rent is \$650.00 per month and the receipt represents rent paid for the entire year of 2011. The owner has not signed the tenancy agreement.

The landlord's agent provided affirmed testimony and submissions during the June 23, 2011 hearing. She stated that the tenants were supposed to move May 31, 2010 and pay the landlords \$1,050.00. As at June 1, 2010 the tenants were squatters and prevented the landlord from conversing with them. They were also to pay \$650.00 per month for the months of February, March, April and May, 2010 but only paid in February.

The landlord further testified that the tenants rented a room to another tenant. They had built a wall in the attic making another room, and collected a security deposit in the amount of \$225.00 as well as rent in the amount of \$450.00 for April and an additional \$50.00 for the last week of March, 2011.

The tenants have refused to allow the landlord into the rental unit, and have refused to allow the landlord to show other units, including the unit that is now vacant after the demise of the tenant in that room. The landlord testified that the tenants were aggressive and threatening, and the landlord was not able to show rooms or units within the building to prospective renters. One of the units rented for \$450.00 per month for which the landlords collected no rent from June, 2010 to June, 2011, and the other rented for \$650.00 per month, for which the landlords lost revenue from December, 2010 to June, 2011.

The landlords claim \$850.00 per month for June, 2010 to date, or \$11,050.00; an additional \$450.00 per month for June, 2010 to June, 2011 for loss of revenue from for the tenants' refusal to allow the landlord to show the rental unit, or \$5,850.00; an additional \$650.00 per month in loss of revenue from December, 2010 to June, 2011 for the tenant's refusal to allow the landlord to show the rental unit that had been rented to the tenant who died in November, 2010, or \$4,550.00; for a total of \$21,450.00.

### **Analysis**

Firstly, with respect to the tenant's testimony that rent was paid to a now deceased tenant, I find that the tenant has failed to provide any evidence to support such a claim; the tenant did not call any witnesses to support that evidence, nor any documentation to corroborate it. I further find that the tenancy agreement that is signed by the now deceased tenant is of no value and is not valid as it does not contain any signature of a landlord or any documentation to support that the tenant was authorized to rent a room to any tenants on the rental property.

I further find that the tenants have not paid rent from March, 2010 to June, 2011, and the landlord is entitled to a monetary order for unpaid rent in the amount of \$650.00 per month as agreed during the January 21, 2010 hearing, or \$10,400.00.

I further find that the tenants have barred the landlords from renting other units as well as erecting a wall to make another unit, rented the unit without authorization from the landlord and collected a security deposit and rents for that unit without authorization from the landlords. Therefore, the landlord is entitled to recover the amount of \$10,400.00 for loss of revenue.

The landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

**Conclusion**

For the reasons set out above, I hereby order the landlord to keep the security deposit in the amount of \$325.00 and I grant the landlords a monetary order pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$20,575.00.

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: July 07, 2011.

---

Residential Tenancy Branch