



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 24, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on March 01, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

One of the landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The landlord testifies that this month to month tenancy was due to start on February 01, 2011. One of the tenants and the landlord signed the tenancy agreement on January 20,

2011. The landlord testifies that at this time the tenants also gave her two cheques one for the first month's rent of \$1,100.00 and one for the damage deposit of \$550.00.

The landlord testifies that the female tenant told her she would give her more post-dated rent cheques as soon as she had changed her address on the cheques. The landlord testifies that later she went home and found the tenant had post-dated the two cheques to February 04, 2011. The landlord states she called the tenants and was told they had to do this as this is the date they get paid.

The landlord testifies she explained to the tenants that rent was due on the first day of each month and she required payment before they moved into the rental unit for the damage deposit. The landlord testifies that she asked if the tenant could get the money and states the tenant told her she properly could and they agreed to meet at the rental unit on January 24, 2011 to do the inspection and pay the damage deposit again.

The landlord testifies that she did not hear from the tenants and they did not return her telephone calls and they did not come to the rental unit on the agreed date. The landlord testifies that on January 26, 2011 she did receive a call from the male tenant who told her they no longer wanted to rent the unit. The landlord explained they had a signed tenancy agreement in place and she would now be unable to re-rent it for the first of February, 2011. The landlord states at this point the tenant hung up. Later his wife called the landlord and told her that they did not have the money to rent the unit and they hadn't given notice on their old unit at that time.

The landlord testifies she sought advice from the RTB and was told she can cash the rent cheque but must hold onto the damage deposit cheque. The landlord states she went to the tenant's bank to cash the rent cheque but was told the tenants had put a stop payment on the cheque. The landlord has provided a copy of the cheque and the tenancy agreement in her documentary evidence.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

I find that both tenants are named on the tenancy agreement and one of the tenants did sign the tenancy agreement. In doing so the tenants entered into an agreement for the rental of this unit. I refer the tenants to s. 45 of the *Act* which states

(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.

As the tenants failed to move into the rental unit after signing an agreement for a month to month tenancy and failed to pay rent for February, 2011 it is my decision that the tenants have breached the tenancy agreement with the landlords. As such the landlords are entitled to recover the loss of revenue from the tenants for February, 2011 as the earliest the tenants would be able to legally end the tenancy would be February 28, 2011.

As the landlords have been successful with their application I find they are entitled to recover the filing fee of \$50.00 from the tenants pursuant to s.72 (1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1,150.00 comprised of \$1,100.00 rent and

\$50.00 filing fee. The order must be served on the respondents and is enforceable through the Provincial Court 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: June 07, 2011.

Residential Tenancy Branch