



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, a monetary order for unpaid rent and for money owed for damage or loss, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The male landlord and male tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue:

The tenant stated that the female tenant's surname was listed incorrectly on the landlord's application. I note that the tenancy agreement makes it unclear the correct surname of the tenant.

On a procedural matter, the landlord submitted a second Notice, which altered the original Notice by changing the unpaid rent dates to June and July, listed unpaid utilities as \$650.00 - water?, and listed the effective move out date. However, this Notice was filed and received less than five business days before the hearing.

The Residential Tenancy Branch Rules of Procedure 3.5 requires copies of any documents, that were not available to be filed with the application, but which the applicant, the landlord in this case, intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent, the tenants in this case, as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

Rule 11.5 states that the Dispute Resolution Officer may refuse to accept the evidence if the Dispute Resolution Officer determines that there has been a wilful or recurring failure to comply with the Act or the Rules of Procedure, or, if for some other reason, the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.

As became clear in the hearing, the tenant acknowledged receiving this Notice and not the one submitted by the landlords with their application. I therefore have allowed this late submission of evidence.

Issue(s) to be Decided

Have the tenants breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlords to an Order of Possession and monetary relief?

Background and Evidence

This one year, fixed term tenancy began on February 20, 2011, was to end March 1, 2012, monthly rent is \$1,400.00 and the tenants paid a security deposit of \$700.00 on February 20, 2011.

The rental unit and the landlords' home are adjoining properties.

The landlord gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on July 7, 2011, via personal delivery. The Notice stated the amount of unpaid rent for May and June 2011 was \$2,800.00, plus an additional \$650.00 for unpaid utilities.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

The landlords' total monetary claim is \$4,200.00, for unpaid rent for June, July and August.

During the course of the hearing the parties agreed that the tenants had vacated the rental unit and that the landlord no longer required an order of possession.

The landlord testified that he delivered the Notice to the tenant on July 7, 2011, and noticed several days later that the rental unit appeared to be empty. The landlord testified that he never received notice of the tenants' intention to vacate and was not sure if the rental unit had been abandoned.

The landlord submits that due to the tenants' lack of notice, he is entitled to rent for August.

The landlords' evidence included the Notice, lacking the effective date, and the tenancy agreement. The tenant stated he did not receive this evidence, only the landlords' application and Notice of Hearing. The tenant, however, did acknowledge receiving a Notice with an effective move out date of July 17, 2011, and the correct months for unpaid rent, June and July.

The tenant testified that he did not pay rent for June due to the furnace not being installed properly such that it would not turn off, causing the tenants to pay extraordinarily high heating bills. The tenant further stated that the landlords' failure in addressing the heating in the rental unit caused the tenants to use electric heaters, causing hydro bills in excess of \$1,000.00.

The tenant submitted that he informed the landlord of this situation in May and that due to this, they would not be paying rent for June.

The tenant submitted that, after receiving the Notice listing July 17, 2011, as an effective move out day, he informed the landlord that they would be moving out on or before that date. The tenant submitted that they moved out on July 12, 2011, and that the landlords were aware of this as they observed the moving van that day and he informed the landlord that they had moved out and that the keys were left in the rental unit.

The tenant stated that the rental unit and the landlords' property are side by side and he was able to observe and did observe the moving out.

The tenant acknowledged not paying rent for June and July.

The tenant testified that he has yet to receive a copy of the tenancy agreement.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlords in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Under section 26 of the *Act*, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. The tenants have not submitted evidence that they had a legal right to withhold rent.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay

the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants did not dispute the Notice within five days nor were they able to show that they did not owe the landlord rent or had some other legal right to withhold rent.

Therefore, as the tenants acknowledge not paying rent for June and July, I find that the landlords have established a total monetary claim of **\$2,850.00** comprised of unpaid rent of \$2,800.00 for June and July, and the \$50.00 fee paid by the landlords for this application.

As to the landlords' claim for unpaid rent for August 2011, I find that on a balance of probabilities, the landlords were aware that the tenants vacated the rental unit on July 12, 2011, and did not take reasonable measures to mitigate their loss by taking steps to re-rent the rental unit, such as cleaning and advertising the rental unit.

I therefore **dismiss** their claim for **\$1,400.00** for the August rent.

I allow the landlords to retain the tenants' security deposit in the amount of \$700.00 in partial satisfaction of the monetary claim and I grant the landlords a monetary order in the amount of **\$2,150.00** for the balance due.

I am enclosing a Monetary Order for \$2,150.00 with the landlords' Decision. This Order is a **legally binding, final Order**, and may be filed in the Provincial Court (Small Claims) should the tenants fail to comply with this Monetary Order.

The landlords are granted leave to reapply for a revised Monetary Order should the enclosed Monetary Order not be enforceable due to the incorrect surname of the female tenant.

Conclusion

The landlords are granted a monetary order for \$2,150.00.

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: August 22, 2011.

Residential Tenancy Branch