



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 the Landlord's Application for Dispute Resolution, seeking a monetary order for unpaid rent and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified she served the Tenants with the Application and Notice of Hearing by registered mail, which was sent on June 14, 2012. Under the Act, service by mail is deemed served in five days. I find the Tenants have been duly served, in accordance with the Act.

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.

Preliminary Matter

One of the Tenants named in the Landlord's Application does not appear on the tenancy agreement. The Landlord testified that this person married the Tenant who was initially named on the tenancy agreement, although the Landlord did not add this person to the tenancy agreement.

I find the Landlord has insufficient evidence to prove both persons named on the Application were her Tenants. Therefore, any orders granted in this matter will only have the name of the Tenant who is identified in the tenancy agreement.

Issue(s) to be Decided

Did the Tenant fail to pay rent to the Landlord?

Background and Evidence

On December 28, 2007, the Landlord and the Tenant entered into a written tenancy agreement. The tenancy agreement began on January 1, 2008, and was for an initial term of one year, and then it continued on a month to month basis. The rent was established at \$1,150.00 per month, payable on the first day of each month.

The Agent for the Landlord testified that the Tenant was often late paying the rent that was due, although the Tenant would always catch up on payments.

The Landlord testified that the Tenant did not pay her the rent due for all of February and for half of March 2012, amounting to \$1,725.00. The Landlord testified she had sold the rental unit on March 15, 2012, although the Tenant remained in the rental unit and the tenancy continued with the new owner.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Tenant has breached section 26 of the Act by failing to pay the Landlord rent that was due.

Under section 26 of the Act, the Tenant may not withhold rent, unless done so in accordance with the Act. For example, a renter may withhold rent when they have an order from a Dispute Resolution Officer allowing them a rent reduction. In this case, there is no evidence the Tenant had authority to withhold rent under the Act.

Furthermore, this is not a situation where the Tenant was entitled to hold rent due to the sale of the property, as the tenancy was continuing with the new owner, according to the testimony of the Agent for the Landlord. Therefore, the Tenant was required to pay the Landlord this rent.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Tenant's breach of the Act and tenancy agreement has caused the Landlord to suffer a loss of \$1,725.00 in unpaid rent. I also award the Landlord the \$50.00 filing fee for the Application.

I grant the Landlord a monetary order under section 67 of the Act in those terms. This order may be enforced in the Provincial Court.

Conclusion

The Tenant breached the Act by failing to pay rent to the Landlord when it was due. The Landlord has established a monetary claim of **\$1,775.00** comprised of one and a half months of rent and the \$50.00 filing fee for the Application. The Landlord is granted a monetary order, enforceable in the Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 10, 2012.

Residential Tenancy Branch