



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The landlord and the female tenant, C.M., participated in the conference call hearing. C.M. confirmed that she was representing the male tenant, R.T.

At the hearing the landlord stated that she did not require an order of possession as the tenants had vacated the rental unit. I consider the claim for an order of possession to have been withdrawn.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The evidence shows that the tenancy began on November 1, 2012 and was set to run for a fixed term of 1 year ending on November 14, 2013. Rent was set at \$1,350.00 per month and the tenants paid a security deposit of \$675.00.

The parties agreed that the tenants did not pay rent on May 1, 2013 and that on May 3, the landlord served them with a 10 day notice to end tenancy for unpaid rent. They further agreed that on or about May 4 the tenants paid \$675.00 of the rent owing and told the landlord that she could retain the security deposit. The landlord provided evidence showing that she told the tenants they could not use the security deposit as rent. The tenants vacated the rental unit on or about May 15.

The tenants claimed that because the landlord served them with a notice to end tenancy, their tenancy ended on the effective date of the notice and because they moved out in mid-May, they should not be held responsible for May's rent.

The tenants argued in the alternative that if the tenancy did not end on the effective date of the notice to end tenancy, it should have ended pursuant to a document entitled "Agreement to end lease" in which the landlord agreed that the tenants could break the lease on the following terms:

- Tenants will give minimum 60 days notice.
- Additional \$50 per month that the tenants lived at the rental property as posted in add listing for \$1350 on lease agreement or \$1400 for rental agreement [reproduced as written]

The tenants signed the document on April 1, 2013 and the landlord signed it on April 5, 2013.

The tenants took the position that this document ended their tenancy effective June 1, 2013 as that was 60 days from the date they signed the document.

I asked C.M. whether she or R.T. had ever given the landlord the 60 days notice identifying the date on which they wished the tenancy to end and she stated that R.T. had given the landlord verbal notice. She also referenced a text message exchange on March 24 in which R.T. wrote:

If I could get the place we like to agree that we can move in beginning of June that would give you 2 months notice and I believe we would owe you an additional \$400 for the difference between rent and lease price. And im sorry to rush you but I need an answer by tomorrow one way or the other because theres someone else that was interested as well. [reproduced as written]

C.M. claimed that the landlord should have known from that text message that they would be vacating the rental unit on June 1. She also stated that the landlord had been contacted by prospective landlords for a reference and should have been able to infer that the tenancy would be ending.

The landlord testified that she was not certain that the tenants would be leaving until April when while babysitting the tenants' child, she discovered a cheque which had been written to their new landlord for a tenancy beginning mid-May.

The landlord seeks to recover the unpaid part of May's rent as well rent for the first 5 days of June when the unit was vacant. The landlord was able to re-rent the unit for a tenancy which began on June 6.

Analysis

I find that the Agreement to end lease document was not an agreement which specified a date on which the tenancy was to end. Rather, the document was an agreement indicating that the landlord would accept a 2 month notice. I find that the tenants did not give the landlord a written notice to end their tenancy as is required under section 45 of the Act. Although the landlord had some indication that the tenancy would be ending, until she had certainty she could not reasonably attempt to re-rent the unit as it was entirely possible that the tenants would not be legally bound to vacate the unit.

While it is true that the notice to end tenancy legally ended the tenancy, I find that the landlord issued the notice because of the tenants' breach of the tenancy agreement and I find that as the tenants refused to pay the full amount of rent due, it was reasonable for her to mitigate her losses by ending the tenancy and obtaining a new tenant.

I find that the tenants were contractually obligated to pay \$1,350.00 in rent on May 1 and that they failed to do so. I cannot find any legal reason why they should be excused from paying rent for the month of May and I therefore award the landlord \$675.00 which she lost in income for that month.

I find that the tenants must also be held responsible for the \$225.00 in income (calculated at a daily rate of \$45.00) she lost for the first 5 days of June. The landlord would not have lost this income had the tenants not breached the tenancy agreement and as the tenants had no legally binding agreement permitting them to end the tenancy on a specific date, I find that they have no defence to this claim. I award the landlord \$225.00.

As the landlord has been successful in her claim, I find that she is entitled to recover the \$50.00 filing fee paid to bring her application and I award her \$50.00.

At the hearing, the tenant provided a post office box number which she said was the tenants' forwarding address. The landlord acknowledged having received that address and stated that she would file a claim against the security deposit. The landlord has 15 days from the date of this decision to either return the security deposit in full or file that claim pursuant to section 38(1) of the Act.

As the landlord intends to file a claim against the security deposit, I have not applied the deposit to the award made herein.

Conclusion

The landlord is awarded \$950.00 and I grant her a monetary order under section 67 for that amount. This order may be filed in the Small Claims Division of the Provincial Court and enforced 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 10, 2013

Residential Tenancy Branch