



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession because the tenants breached an agreement with the landlord; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the Act; served by registered mail on June 01, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the Act.

The landlord appeared, gave sworn testimony, was provided the opportunity to present 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

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this month to month tenancy started on February 01, 2013. Rent for this unit was \$1,500.00 per month and was due on the 1st day of each month. The tenants paid a security deposit of \$750.00 on February 01, 2013. One tenant gave the landlord notice to vacate the unit by e-mail on May 23, 2013 with a move out date indicated as June 01, 2013. That tenant did vacate the rental unit on May 28, 2013. The other tenant vacated the rental unit on or about June 01, 2013 without informing the landlord.

The landlord testifies that as this was insufficient notice it did not give the landlord the opportunity to re-rent the unit for June, 2013 and the landlord was not made aware the other tenant was vacating and only discovered this when the landlord went to the unit on June 05, 2013. The landlord seeks to recover rent for June from the tenants to the amount of \$1,500.00. The landlord testifies that in his application he had only claimed \$1,125.00 which was \$750.00 for a loss of rent and the security deposit from one tenant. The landlord states this was an error as he holds the security deposit in trust and the \$750.00 rent claimed was the amount owed by the tenant that gave the late notice. The landlord requests to therefore amend his application to include the entire amount of rent for June as both tenants vacated without proper notice.

The landlord requests to keep the tenants security deposit in partial satisfaction of this claim. The landlord also seeks to recover the filing fee of \$50.00 from the tenants.

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 sworn testimony before me.

When two tenants are named on a tenancy agreement they are then co-tenants under the agreement and are jointly and severally responsible for the rent and have the same rights and obligations under the *Act*. In this matter if one tenant gave notice to end the tenancy then the tenancy would end and the landlord would be entitled to enter into a new tenancy agreement with the remaining tenant. In this case both tenants choose to vacate the rental unit.

I refer the parties to the s. 45(1) 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 Notice to end tenancy was given on May 23, 2013 this is in non compliance with s. 45 of the *Act* and therefore the earliest the tenants could have ended the tenancy would be June 30, 2013, Consequently, I find the landlord is entitled to recover unpaid rent for June to the sum of \$1,500.00 and I have allowed the landlord to amend his application as the tenants should have been aware that this was a late notice and they were responsible for June's rent.

I Order the landlord to keep the tenants security deposit of \$750.00 pursuant to s. 38(4)(b) of the *Act*. A Monetary Order will be issued to the landlord for the balance due of **\$750.00**.

I further find as the landlord has been successful with this claim that the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$800.00. 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 20, 2013

Residential Tenancy Branch

