



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

The landlord applies for an order of possession and a monetary award for unpaid rent and a loss of rental income. By the time of hearing the tenants had turned over possession and so an order of possession is not longer sought.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the landlord is entitled to recover any monetary award?

Background and Evidence

The rental unit is a three bedroom house. The tenancy started in February 2011. The monthly rent is \$1700.00, due on the first of each month. The landlord holds an \$850.00 security deposit.

On June 1, 2013, the landlord was in possession of the tenants' June rent cheque. On or about June 2nd the landlord served the tenants with a one month Notice to End Tenancy for smoking in the rental unit, contrary to the tenancy agreement.

On or about June 5th the landlord checked and determined that the tenants' rent cheque would not be honoured. It appears that the tenants, upon receiving the one month Notice, placed a "stop payment" on their June rent cheque.

The same day, the landlord issued a ten day Notice to End Tenancy for non-payment of the June rent.

The one month Notice to End Tenancy listed an “effective date” for the tenancy to end as June 30, 2013 contrary to s. 47(2) of the *Residential Tenancy Act* (the “Act”) which provides:

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) 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.

The tenants did not dispute either Notice nor did they pay the landlord any further money. They say that while they had good reason to dispute the one month Notice regarding smoking, they didn't and simply resolved to move at the end of June. When they received the ten day Notice they felt they were no longer responsible for the entire June rent. The tenant Mr. D.A. acknowledges that he checked with the Residential Tenancy Branch about his rights and obligations on received the one month Notice and was aware that pursuant to s. 53 of the *Act* an incorrect termination date in a Notice automatically corrects itself to the earliest lawful date; in this case, July, 31st.

Analysis

The rent for June came due June 1st and was a debt due in full on that day. The fact that the landlord later issued a one month Notice or a ten day Notice resulting from the non-payment of that rent does not affect the fact that it was owed in full nor does it turn a month to month tenancy into a day by day tenancy. The tenants are indebted to the landlord for the June rent of \$1700.00.

Without an agreement between them, the parties cannot avoid the “automatic” effect of s. 53. The one month Notice would have ended the tenancy on July 31st, not June 30th, and the tenants would have been responsible for July rent.

However, that is all beside the point because the tenants' actions caused the tenancy to end in mid-June. Their failure to pay June rent gave rise to the ten day Notice to End Tenancy of June 5th. The effect of that Notice was to end the tenancy ten days later.

The tenants continued in possession until July 2nd. The landlord has attempted without success to find new tenants, despite the apparent uncertainty about when the present tenants would give back possession.

Had the tenants given their own Notice to End Tenancy in June it could not have been effective until the end of July and they would have been responsible for the July rent. They cannot avoid that obligation by not paying the June rent.

I find that the tenants have caused the landlord to lose the rental income from the month of July in the amount of \$1700.00 and I award that amount to the landlord.

Conclusion

The landlord is entitled to a monetary award of \$3400.00, as claimed, plus the \$50.00 filing fee. I authorize the landlord to retain the \$850.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants jointly and severally for the remainder of \$2600.00.

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: July 11, 2013

Residential Tenancy Branch

