



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenants agreed they received the Notice to end Tenancy dated June 1, 2013 posted on the door and the Application for Dispute Resolution by personal service at the office. I find that the tenants were served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated June 1, 2013. They have vacated so an Order of Possession is no longer necessary. The remaining issue is whether the landlord has proved entitlement to a Monetary Order for rental arrears or loss and to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. This was a very contentious hearing with the parties often interrupting each other on the telephone. It is a very complicated situation and all the parties and witnesses had to be questioned to ascertain the facts. The undisputed evidence is that the tenancy commenced on June 1, 2013 for the upstairs tenants to rent the whole home, although the landlord states that the tenants moved in earlier. They immediately began to sublease parts of the home from May 16, 2013. A security deposit of \$1240 was paid on April 29, 2013 and rent was \$2480 a month for the whole house. It is undisputed that the upstairs tenants paid no rent. They said they vacated

on June 3, 2013 because the landlord was threatening them and was violent. They said they were withholding the rent because the garage and some appliances were not included although they were in the lease. A lease is in evidence showing a tenancy start date of June 1, 2013 and a rent of \$2480. Under clause 3 of the lease is written in "garage included" and beside Laundry is written "2". The landlord said that the tenant wrote in these items and there was no intention to include the garage as it is rented separately to a man since 2009. The man renting the garage gave evidence that the tenants looked at the premises while he was present and using the garage and they never questioned if it was included in the house rental. He pays \$800 a month for it since November.

Two tenants from the basement suite gave evidence that these upstairs tenants had represented themselves as the owner of the home and had rented the suite to them. They paid \$750 rent for June 2013 and \$450 security deposit to these upstairs tenants and got no receipts; the tenants said they never cashed the cheque for the security deposit but got the \$750 in cash. They said they were alarmed when they met the owner one day and he questioned them; they thought they were victims of a scam and telephoned the police and paid their July rent of \$900 to the landlord.

The landlord claims \$2480 rent for each of June and July 2013 but he does agree that he collected \$900 for July from the downstairs tenants. He said he also got \$150 from another downstairs tenant for June 2013. Another tenant's information in file states that he/she paid \$1200 to these upstairs tenants and moved in on May 16, 2013. That tenant is no longer living there. From the documents and oral evidence, it appears the upstairs tenants collected to June 30, 2013 \$900 rent plus \$300 security deposit from one tenant and \$900 rent plus \$450 security deposit from another tenant but remitted nothing in rent to the owner/landlord of the home.

The upstairs tenants claim they had to leave the home because of threats from the landlord to blow up the home etc. They said they called the Police. They attempted to assert a damage claim but I advised them that they must file their own application to claim damages against the landlord. The other tenants said that the landlord has never behaved in a threatening way, although he is a bit excitable. They said these tenants left in early June and left some garbage behind them. The upstairs tenants said that neither the landlord nor the other tenants were truthful.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

I find that the upstairs tenants have abandoned their tenancy and given up possession to the landlord so an Order of Possession is not necessary. I find the weight of the evidence is that there are rental arrears and rental loss. I find they left without the sufficient one month notice as set out in section 45 of the Act so I find them responsible for rent for June and July 2013. The rental amount owed for June and July 2013 is \$4960 (\$2480 x 2) but I find the landlord fulfilled his obligation and mitigated his loss by collecting rent from the tenants remaining in the home. I find he collected \$1050 which must be deducted from the rent owing for the whole home. However, I find the upstairs tenants are also holding \$750 in security deposits collected from other tenants and this must be transferred to the owner/landlord as he has assumed their tenancy agreements.

In respect to the tenants' claim that they had to move without legal notice because of them not getting what they were promised and the landlord's threatening behaviour regarding the rent, I find that they copied the clauses on the garage inclusion and "2" laundry into the lease themselves and I find insufficient evidence that the landlord ever agreed to this. I find the landlord's evidence more credible on this point as the tenants were evasive and inconsistent in their statements when asked if they copied the notes themselves; also the additions are not initialled by the parties, they appear to be in the tenants' writing so I find they are not binding on the landlord. I found it more probable that there is one laundry facility and one of each of other kitchen appliances in this older home but the upper tenants translated this to mean that there should be separate appliances for each suite they chose to rent. I find the lease did not specify separate appliances for each unit. Likewise, I find it improbable that the landlord would agree to rent the garage for which he was already receiving a good rent. Therefore, I find the tenants got what they bargained for and they are not entitled to a refund or rebate of rent based on these claims. Furthermore, I find the weight of the evidence from other tenants is credible and supports the landlord's statements that he was not threatening but asking for the overdue rent. I found the upstairs tenants also excitable on the telephone and they were unable to explain to my satisfaction why they were collecting rent for the home and giving none to the landlord. I dismiss the claims of the upstairs tenants.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the amounts owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent owed per. Lease for June and July 2013(2480x2)	4960.00
Security deposits collected from other tenants by the upper tenants	750.00
Filing fee	50.00
Less rent collected directly by landlord from other tenants for July 2013	-1050.00
Less security deposit (no interest 2013)	-1240.00
Total Monetary Order to landlord	3470.00

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 21, 2013

Residential Tenancy Branch