



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The landlord also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenants. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2014 and the tenants moved out of the rental unit on September 28, 2014. A written tenancy agreement was signed by the parties, but not available for this hearing. Rent in the amount of \$460.00 bi-weekly was payable commencing May 1, 2014. No security deposit or pet damage deposit was collected.

The landlord further testified that the tenants failed to pay rent when it was due on September 12, 2014 and on September 17, 2014 the landlord personally served one of the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice has been provided and it is dated September 17, 2014 and contains an

expected date of vacancy of September 27, 2014 for unpaid rent in the amount of \$460.00 that was due on September 12, 2014. The tenants have not paid any rent since the issuance of the notice and another payment of \$460.00 became due on September 26, 2014, and the tenants moved out the day after the effective date of the notice. The landlord claims unpaid rent in the amount of \$920.00.

The landlord also testified that the rental unit has not been re-rented; the landlord sold the property and purchasers take possession tomorrow.

The first tenant testified that the tenancy was a family matter; the parties are related and this matter should have been settled out of arbitration. The tenant denies that there ever was a signed tenancy agreement, but the tenants were renting from the landlord and had a verbal agreement that the house wouldn't be put on the market for sale, but the landlord put it up for sale shortly after the tenants moved in. There were a lot of lookers, some of which were illegal walk-throughs, which caused a lot of tension between the parties.

The tenant also testified that the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause as well and the tenants sought advice from a lawyer who told the tenants that because it didn't contain a reason, it wasn't valid. The tenants were also advised that if they got a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenants didn't have to pay rent.

The tenants didn't want to leave the rental unit but once served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenants decided to move out.

The second tenant testified that he only recalls getting the 10 Day Notice, and that the tenants shouldn't have to pay the rent; the landlord can pay her own mortgage.

Analysis

I accept that this arrangement was a family matter, although not certain how the parties are related. However, whether or not a written tenancy agreement exists, a tenancy is created by virtue of the landlord collecting rent from the tenants in exchange for rental accommodation. Regardless of whether or not the parties are related, or how they might be related, or whether or not the parties actually signed a tenancy agreement, the *Residential Tenancy Act* applies.

I have reviewed the evidentiary material, and I am satisfied in the material and in the testimony of the parties that a tenancy commenced on May 1, 2014 for rent in the amount of \$460.00 bi-weekly. The landlord served the tenants with a notice to end the

tenancy because the tenants failed to pay rent in the amount of \$460.00 that was due on September 12, 2014. The tenants didn't pay the rent and another payment of \$460.00 became due on September 26, 2014. I also find that the tenants did not move out on the effective date of vacancy and there was no possibility that the rental unit could be re-rented by the time the next rental payment became due on October 10, 2014. However, the landlord did not advertise the rental unit for rent, but sold it. The tenants moved out on September 28, 2014, and I find that the landlord is entitled to rent for the time t the tenants resided in the rental unit, which is \$460.00, plus an additional 3 days. Therefore, I am satisfied that the landlord has established a claim in the amount of \$460.00, plus \$98.57 to the end of the tenancy.

Since the landlord has been successful with the application, the landlord is also entitled to recover the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$608.57.

This order is final and binding and may be enforced.

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: November 14, 2014

Residential Tenancy Branch

