



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The landlord and 4 of the 5 tenants participated in the conference call hearing. The 5th tenant, J.M., was not represented by the other tenants but as the landlord was able to prove that he had been served with the application for dispute resolution and notice of hearing, the hearing proceeded in his absence.

At the hearing, the landlord withdrew the claim for an order of possession.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began on May 1, 2014 and was set to run for a fixed term of 1 year, ending on April 30, 2015. The tenants were obligated to pay \$2,600.00 in rent in advance on the first day of each month. The 5 co-tenants were in the habit of each paying a portion of the rent to the landlord. In the months of July, October, November and December, at least 2 of the co-tenants did not give the landlord their share of the rent. On December 6, the landlord served the tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The tenants vacated the rental unit on December 15 and the landlord immediately began advertising the unit for rent.

The landlord originally claimed \$2,600.00 in rental arrears up to and including December 2014, but at the hearing advised that the tenant D.C. had paid her \$425.00 and reduced the amount of her claim for arrears to \$2,175.00. The tenants did not dispute the amount of the rental arrears, although they suggested that they should not be responsible for rent for the entire month of December since they vacated the unit on December 15.

The landlord testified that she was unable to re-rent the unit for the month of January and seeks to recover \$2,600.00 in lost income for that month. The tenants did not dispute that the landlord has advertised the rental unit since they vacated.

The landlord testified that because the tenants did not pay her the full amount of rent due, she was in an overdraft with her bank from October 14 – December 6 and she seeks to recover the \$540.00 charged to her by her bank. The landlord further testified that she was unable to make one mortgage payment which resulted in a \$95.00 charge which she also seeks to recover from the tenants.

The landlord also seeks to recover the \$100.00 filing fee paid to bring her application.

Analysis

The parties all acknowledged that of the 5 co-tenants, only 2 failed to pay their share of the rent. However, because the parties chose to enter into a tenancy together, they are jointly and severally liable to the landlord for any losses resulting from a breach of the tenancy agreement. What this means is that the landlord may pursue any one or all of the tenants to recover her losses. The tenants may dispute amongst themselves which are responsible for the losses, but as against the landlord, they are all liable.

The tenants acknowledged rental arrears of \$2,175.00 in 2014 and I find that the landlord is entitled to recover these arrears. Although the tenants vacated the rental unit in mid-December pursuant to the Notice, they were obligated under the terms of their contract to pay rent on December 1st and their breach of the contract prevented the landlord from obtaining income in the month of December. I find that the tenants are obligated to pay rent for the entire month of December even though they did not reside in the unit for the entire month. I award the landlord \$2,175.00 in rental arrears.

The tenants breached the tenancy agreement by not paying the rent. The landlord had an obligation to minimize her losses which she did by evicting the tenants and immediately seeking to secure new tenants. Parties who breach a contract can be held responsible for foreseeable losses resulting from that breach. I find that the tenants should have foreseen that the landlord could lose rental income if they breached the contract and I find that the landlord acted reasonably to minimize her losses. I find that the landlord is entitled to recover that lost income for January and I award her \$2,600.00.

I am not satisfied that the bank charges for the overdraft or the charge for the late mortgage payment are reasonably foreseeable. The landlord is operating a business and I find that the tenants, as her clients, could not have foreseen that her business was

in a precarious financial position or that substantial bank charges would result because the landlord did not have adequate resources to keep her business finances in good standing. I therefore dismiss the claim for bank charges.

As the landlord has been substantially successful in her claim, I find that she should recover the \$100.00 filing fee she paid and I award her \$100.00.

Conclusion

The landlord has been awarded \$4,875.00 which represents \$2,175.00 in rental arrears for 2014, \$2,600.00 for loss of income in January 2015 and the \$100.00 filing fee. I grant the landlord a monetary order under section 67 for \$4,875.00. 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: January 13, 2015

Residential Tenancy Branch

