



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The relevant facts are not in dispute. The tenancy began on February 1, 2014 and was set to run for a fixed length of time ending on January 31, 2015. The tenants were obligated to pay \$1,400.00 in rent in advance on the first day of each month. The tenants paid a \$700.00 security deposit and a \$700.00 pet deposit at the outset of the tenancy.

The tenants failed to pay \$200.00 of their rent in May 2014 and further failed to pay \$200.00 of their rent in June 2014. The tenants vacated the rental unit on July 15, 2014 and failed to pay \$800.00 of their rent for the month of July. The tenants advised the landlord that they were vacating when they gave him a letter on June 4, 2014 in which they advised that they would be leaving the residence because of health issues resulting from mold exposure.

The landlord seeks to recover the rental arrears as well as the \$50.00 filing fee paid to bring his application.

The tenant N.S., who represented both himself and the tenant M.S., testified that he withheld rent in the months of May and June because there was mold in the rental unit which was impacting the health of his newborn son.

Analysis

The tenants were committed to pay rent for the rental unit until January 30, 2015. In order to end the tenancy early, the tenants either needed the permission of their landlord or they needed

to follow the steps outlined in section 45(3) of the Act. This section states that if a landlord has failed to comply with a material term of the tenancy agreement, the tenants can give him written notice of that breach and give the landlord a reasonable time to correct the breach. If the landlord fails to correct the breach within that reasonable time, only then may the tenants end the tenancy early.

I find that the tenants failed to notify the landlord in writing that there was a mold issue in the unit and they failed to provide him with a reasonable opportunity to resolve the problem before giving him notice that they were ending their tenancy. Even if the mold problem represented the landlord's failure to comply with a material term of the tenancy agreement, and I make no finding on that issue, I find that the tenants failed to end the tenancy in compliance with the Act.

Section 26(1) of the Act provides that tenants must pay rent when it is due regardless of whether the landlord is complying with the Act. I find that the tenants were obligated to pay \$1,400.00 per month in rent and that they failed to pay \$200.00 of their rent in each of the months of May and June and they failed to pay \$800.00 of their rent for the month of July. I find that the tenants did not have legal reason to end the tenancy early and therefore were obligated to pay the full amount of rent for the month of July. I find that the landlord is entitled to recover these arrears and I award him \$1,200.00.

As the landlord has been successful in his application, I find he should recover the filing fee and I award him \$50.00 for a total award of \$1,250.00.

Conclusion

The landlord has been awarded \$1,250.00. I order the landlord to retain this amount from the \$1,400.00 in deposits that he holds in trust and I order him to return the balance of \$150.00 to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$150.00. 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: February 06, 2015

Residential Tenancy Branch

