



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNR, FF

For the landlords – OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenant JW and the landlords attended the conference call hearing and gave sworn testimony. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw the application for an Order of Possession. JW withdrew their application as they have vacated the rental unit.

Preliminary Issues

The parties advised me there was an error in the female tenant's legal name. The parties did not raise any objections to the tenants name being corrected and this has now been amended.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this fixed term tenancy started on August 01, 2013 for a year and then reverted to a month to month tenancy. Rent for this unit was \$1,500.00 per month and was due on the 1st of each month.

MG testified that the tenants failed to pay all the rent for December, 2014 leaving an unpaid balance of \$200.00 and failed to pay any rent for January, February, March or April, 2015 leaving a total amount of unpaid rent of \$6,200.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on March 29, 2015 and the Notice was served in person to the tenants on this date. The Notice states the tenants owed \$5,700.00 that was due on March 01, 2015. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 08, 2015. The tenants did not pay the outstanding rent and although the tenants had disputed the Notice within five days, the tenants vacated the rental unit on April 30, 2015 and have therefore withdrawn their application.

MG testified that the tenants did not notify the landlords that they had vacated the rental unit until May 04, 2015 when the tenants sent an email to the landlords. The landlords have since gone into the unit and found it requires work to prepare it to be re-rented. MG testified that due to the late notice and the condition the unit was left in the landlords seek to recover a loss of rent for May, 2015 of \$1,500.00. MG testified that

they had also sought to recover a loss of rent for June, 2015 but withdraw this section of their claim.

The landlords seek a Monetary Order to recover unpaid rent and a loss of rental income of \$7,700.00 and the filing fee of \$100.00.

JW testified that they do not dispute that they owe rent to the landlord and that they moved from the unit after receiving the 10 Day Notice. They had intended to dispute the Notice and had filed their application to do so, but due to their financial situation they decided to move from the unit so the debit did not keep growing.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, I am satisfied from the undisputed evidence before me that the tenants have failed to pay rent to an amount of **\$6,200.00**. The landlords are entitled to recover these rent arrears and the landlords will receive a monetary award for this amount pursuant to s.67 of the *Act*.

With regard to the landlord's claim for a loss of rental income for May, 2014; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states. In part, that In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Consequently I am satisfied that the landlords were unable to re-

rent the unit for May 01, 2015 and I find the landlords have established a claim to recover a loss of rental income of **\$1,500.00** for May, 2015. The landlords will receive a monetary award for this amount pursuant to s.67 of the *Act*.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$7,800.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

The tenant's application has been withdrawn.

Dated: May 19, 2015

Residential Tenancy Branch

