



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF (Landlord's Application)
 MNSD, FF, O (Tenants' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlord and the Tenants.

The Landlord applied for a Monetary Order for unpaid rent, to keep the Tenants' security deposit, and to recover the filing fee. The Tenants applied for the return of their security deposit, to recover the filing fee, and for "Other" issues.

Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance by any of the Tenants during the 20 minute duration of the hearing despite the Tenants being provided with this same date and time to hear their Application.

The Landlord stated that she had not been served with or was aware that the Tenants had made an Application. As the Tenants failed to appear for this hearing and present the merits of their Application and prove service to the Landlord, I dismissed the Tenants' Application. I then turned my mind to the service of the Landlord's Application.

The Landlord testified that she had served the Tenants with a copy of her Application and the Notice of Hearing documents by registered mail on June 5, 2015. The Landlord testified that she sent it to the Tenants' forwarding address which was provided to her on June 4, 2015 in the Tenants' notice to end the tenancy. The Landlord provided a copy of the Canada Post tracking number as evidence to verify this method of service.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail. As a result, based on the undisputed evidence of

the Landlord, I find the Tenants were deemed served with the required documents on June 10, 2015 pursuant to the Act.

The Landlord explained that her monetary claim consisted of unpaid rent, cleaning, and damages to the rental unit. However, the Landlord had not indicated on her Application that she was making a claim for damages to the rental unit as this box was not selected on the second page of the Application. While the Landlord had provided a breakdown of her monetary claim which included cleaning and damages to the rental unit, the Landlord failed to provide any documentary evidence to support this claim such as a Condition Inspection Report, photographs, receipts and invoices.

The Landlord claimed that she had submitted these after she had made the Application. However, none of this evidence was before me and the electronic records relating to this file indicates that no further evidence was received by the Residential Tenancy Branch after the Application was made. However, after taking into consideration the above factors, I granted the Landlord's request to withdraw this portion of her claim and provided leave to re-apply.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for June 2015?
- Is the Landlord entitled to keep all of the Tenants' security deposit in partial satisfaction of the Landlord's monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this written tenancy agreement for a fixed term tenancy commenced on November 1, 2011 and finished on April 30, 2015. After this time the tenancy continued on a month to month basis. Rent in the amount of \$700.00 was payable at the start of the tenancy. However, through a number of rent increases, the rent payable at the end of the tenancy was \$764.00 payable on the first day of each month. The Tenants provided the Landlord with \$350.00 as a security deposit on November 31, 2011 which the Landlord still retains.

The Landlord testified that the Tenants failed to pay rent on June 1, 2015. The Landlord then received a written notice from the Tenants which stated that they had vacated the rental unit. The Landlord was unsure of the exact date the Tenants had left. The Landlord testified that as a result, she served the Tenants personally with a 10 Day Notice for Unpaid Rent or Utilities (the "Notice") on June 5, 2015. The Landlord testified

that the Notice indicated a vacancy date of June 10, 2015 due to \$764.00 in unpaid rent for June 2015.

The Landlord testified that the written notice given to her by the Tenants that they had vacated the rental unit, contained their forwarding address and this was the address she used to make the Application on June 9, 2015. The Landlord testified that the rent for June 2015 is still unpaid by the Tenants. As a result, the Landlord now seeks to recover this amount.

Analysis

In relation to the timing of the Landlord's Application to retain the Tenants' security deposit, I find the undisputed evidence before me is that the Landlord was served the Tenant's forwarding address in writing on June 4, 2015 in the Tenant's written letter. As the Landlord made the Application to keep the Tenants' security deposit on June 9, 2015, I find the Landlord made the Application within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act, unless the Tenant has authority under the Act to withhold payment. Section 45(1) of the Act provides for a tenant's obligation when ending a month to month (periodic) tenancy; in this respect, the Act states that a tenant must give the landlord a notice of at least one full rental month before ending the tenancy and this must be done in writing.

Based on the foregoing, I find that there is no evidence before me that the Tenants provided proper notice that allowed for the correct period of time to elapse before the Tenants could have ended this periodic tenancy. There is also insufficient evidence before me to show that the Tenants had legal authority to end the tenancy early.

Therefore, I am only able to conclude from the evidence before me that the Tenants were still required to pay rent for this tenancy until it was legally ended either party. As a result, I accept the Landlord's undisputed evidence that rent for June 2015 was not paid and award this amount to the Landlord for \$764.00.

As the Landlord has been partially successful in this matter, I am only prepared to award the Landlord half of the filing fee paid in the amount of \$50.00 pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$814.00 (\$764.00 + \$50.00).

As the Landlord already holds \$350.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining amount of \$464.00. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenants have breached the Act by failing to pay rent in accordance with the Act. Therefore, the Landlord may keep the Tenants' security deposit and is granted a Monetary Order for the remaining balance in the amount of \$464.00. The Landlord's Application for cleaning and damages to the rental unit is withdrawn and the Landlord is at liberty to re-apply for this portion of the claim.

As the Tenants failed to appear for the hearing their Application is dismissed without leave to re-apply.

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 06, 2015

Residential Tenancy Branch

