



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent. The tenants did not appear at the hearing. The landlord submitted that each named tenant was served with the hearing documents by registered mail sent on May 15, 2015 at the rental unit address and that two of the four registered mail packages were successfully delivered and two were returned as unclaimed. A search of the registered mail tracking numbers showed that the package sent to the tenant referred to by initials CG was delivered on May 22, 2015 and the package sent to the tenant referred to by initials FL was delivered on May 26, 2015.

The landlord provided four registered mail receipts along with copies of the envelopes and documents included in the each of the registered mail envelopes as proof of service. The landlord stated the property had been sold May 8, 2015 but that the named tenants had filed an Application for Dispute Resolution that is on-going but that their service address was that of the rental unit until the last reconvened hearing held on August 27, 2015 (file number provided on cover page of this decision).

I was satisfied the tenants referred to by initials CG and FL received the landlord's hearing packages. With respect to the other two tenants, referred to by initials DG and EB, section 90 of the Act deems a person to have received documents five days after mailing even if the person refuses to accept or pick up their mail and I found them to be deemed served five days after mailing.

In light of the above, I proceed to consider the landlord's claims against all four of the named tenants.

Issue(s) to be Decided

Is the landlord entitled to recover unpaid rent from the tenants?

Background and Evidence

The landlord's agent submitted that the four co-tenants entered into a tenancy agreement that commenced on March 1, 2013 for a fixed term set to expire October 31, 2015 and the tenants were required to pay rent of \$4,300.00 on the 1st day of every month. One of the co-tenants,

referred to by initials DG, had supplied the landlord's agent with post-dated cheques; however, the cheque for May 2015 was dishonoured. On May 7, 2015 the landlord's bank issued a "Returned Item Advise" indicating the reason the tenant's cheque was dishonoured is because the tenant's account had been closed.

The landlord submitted that the property was sold on May 8, 2015 and the landlord compensated the purchaser pro-rated rent for 24 days in May 2015 and the security deposit was transferred to the purchaser. Accordingly, the landlord seeks to recover from the tenants the \$4,300.00 that should have been paid to the landlord on May 1, 2015.

I ordered the landlord to provide me with a copy of the Statement of Adjustments to verify the landlord's submissions and documentation from the bank to show the May 2015 rent cheque was dishonoured. The landlord provided the evidence as ordered and I verified that the landlord did transfer the security deposit to the purchaser and compensated the purchaser for pro-rated rent for 24 days for the month of May 2015 as submitted during the hearing. The landlord also provided a copy of the rent cheque and "Returned Item Advise" showing the tenant's rent cheque dated May 1, 2015 in the amount of \$4,300.00 was dishonoured because the account had been closed.

With respect to the tenancy agreement, the signature page was signed by only one of the four named co-tenants on February 28, 2013. The landlord's agent explained that the other three co-tenants were privy to the contract and had initialled the second page in the space provided for the fixed term. The landlord's agent also submitted that all four co-tenants had identified themselves as tenants in a Tenant's Application for Dispute Resolution and that both the landlord and the co-tenants considered there to be four co-tenants under this tenancy agreement (the file number for the Tenant's Application is recorded on the cover page of this decision).

Analysis

Under the Act, the definition of landlord includes a former landlord where applicable. In this case, the applicant landlord was the owner of the property during the tenancy until the property was sold effective May 8, 2015. Since this claim pertains to rent that was payable on May 1, 2015 I find the circumstances are such that the applicant meets the definition of landlord. I also accept that the four named co-tenants had privity of contract as evidenced by their initials on the second page of the tenancy agreement and in naming themselves as co-tenants in filing their Application for Dispute Resolution.

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent. I was not provided any evidence to suggest the tenants had the legal right to withhold rent that was due on May 1, 2015.

Accordingly, I find the landlord was entitled to receive rent that was due from the tenants on May 1, 2015 in the amount of \$4,300.00.

The landlord has provided documentary evidence to show the tenant's rent cheque for May 1, 2015 was dishonoured. The landlord's documentary evidence also shows that the landlord compensated the purchaser of the property pro-rated rent for 24 days in May 2015. Therefore, I am satisfied the landlord has suffered a loss of \$4,300.00 due to the tenants failure to pay rent and I grant the landlord's request to recover that amount from the tenants.

As the security deposit was transferred to the purchaser, the landlord's claim has not been reduced by the security deposit and return of the security deposit is a matter between the tenants and the new landlord.

Since the landlord was successful in this application, I award the landlord recovery of the \$50.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order in the total amount of \$4,350.00 to serve and enforce as necessary.

Conclusion

The landlord has been provided a Monetary Order against the tenants in the amount of \$4,350.00 for unpaid rent for the month of May 2015 and recovery of the filing fee.

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

