



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Background and Evidence

Agreed Facts: The tenancy with all the named Tenants in this application started on March 1, 2013 on a fixed term to end October 31, 2015. Rent of \$4,300.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$2,150.00 as a security deposit. The rental unit was sold to a 3rd party on May 8, 2015 and the Landlord transferred the rent for May 2015 and the security deposit to the purchasers.

The Landlord states that the May 2015 rent cheque was returned and the Landlord claims \$4,300.00.

Tenants' evidence: Tenants EB and DG gave the Landlord a notice to end tenancy for April 30, 2015. Tenants CG and FL wanted to remain in the unit. Tenants EB and DG found two tenants to replace them and continue with the tenancy with Tenants CG and FL. The Landlord agreed to accept two new tenants along with Tenants CG and FL however when the new tenants were given an addendum they refused to become tenants. The Tenants argue that the Landlord caused the two new tenants to refuse to take the tenancy by making a reference to the delayed sale of the unit in the addendum. The Tenants argue that the Landlord caused his own loss by unilaterally and without notice imposing new terms for the tenancy of the rental unit. Tenants CG and FL remained in the unit.

Landlord's evidence: The Landlord accepted the notice to end tenancy from Tenants EB and DG and informed Tenants CG and FL that they were responsible for May 2015 rent even if new co-tenants could not be found. Tenants CG and FL offered to pay the Landlord a portion of May 2015 rent but this was refused by the Landlord as the Landlord thought that by doing this it would imply the Landlord's acceptance of another person that had been allowed to sublet a portion of the rental unit by the Tenants. The Landlord was not informed of this sublet.

Analysis

Section 26 of the Act provides that 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. Section 45 of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy unless the Landlord enters into a new tenancy agreement.

As the Tenants were co-tenants on a fixed term tenancy agreement, I find that Tenants EB and DG could not end the tenancy prior to the fixed term date. However based on the undisputed evidence of the Landlord I find that by allowing Tenants CG and FL to

remain in the unit for May 1, 2015 and onwards, the Landlord entered into a new tenancy agreement with these Tenants regardless of whether additional co-tenants were found or not. As a result I find that the fixed term tenancy with all 4 tenants ended on April 30, 2015 and a new month to month tenancy agreement was entered into with Tenants CG and FL for May 1, 2015. As there is no evidence that the rental amount changed when the tenants changed, I find that the Landlord is entitled to rent for May 2015 in the amount of \$4,300.00 from Tenants CG and FL alone.

As the Landlord has been successful with its application I find that the Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of \$4,350.00.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$4,350.00**. If necessary, this order may be filed in the Small Claims 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: April 12, 2016

Residential Tenancy Branch