



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

The landlord applies for a monetary award for unpaid rent, for damages suffered as the result of a failure by the landlord to complete a sale of the property and for the cost of a baseboard heater installation.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

During the hearing the tenants gave evidence to the effect that they considered they were entitled to compensation from the landlord. It was made clear that without an application for dispute resolution from the tenants an arbitrator is without authority to deal with such a claim. The tenants are free to make their own application, subject to any applicable time limitation period.

There appears to have been a Small Claims application made by the landlord in the Provincial Court perhaps seeking some or all of the relief claimed here. The tenants have filed a Reply document from that court. Unfortunately, it is illegible. That is the only court document before me. The parties here seem to agree that the claim was dismissed at a settlement conference in that court because the court decided it had no jurisdiction to hear it.. The tenants have made mention in their materials that the matter is therefore *res judicata*, meaning “already decided.”

The matter is not *res judicata*. It has merely been rejected by the Provincial Court for want of jurisdiction. There has been no determination of the claim. I feel free to consider the claim before me without restriction. .

Issue(s) to be Decided

Do the tenants owe rent? Did they remove a baseboard heater? Were they the cause of the landlord's failure to complete the sale of the property? If so, what damage or loss has been suffered?

Background and Evidence

The rental unit is a three bedroom house. The landlord and Ms. M.W., his wife and co-owner, were friends with the tenants before this tenancy. The tenancy started in September 2017. Because of the friendship the parties did not prepare a written tenancy agreement. The rent was \$1200.00, due on the first of each month. No deposit money was requested or paid.

The tenant Mr. J.S. indicates the arrangement was to be for twelve months at \$1200.00 and then the parties were going to discuss the tenancy again. The landlord doesn't agree.

In the early part of 2018 the landlord and Ms. M.W. offered the house for sale and ultimately entered into a contract for purchase and sale with C.J. The sale was to complete on June 1, 2018.

In March the landlord gave the tenants a two month Notice to End Tenancy pursuant to s. 49 of the *Residential Tenancy Act*, on the basis that the purchaser had given a written request for possession of the home with an intention to reside in it.

The tenants challenged the two month Notice by making an application for dispute resolution. A hearing was set for Jun 13, 2018.

The tenants failed to pay rent for April. As a result, the landlord issued a ten day Notice to End Tenancy for non-payment of rent and served it on the tenants April 4, 2018. The tenants challenged that Notice and it was set to be heard on June 13 in tandem with their challenge to the earlier two month Notice.

On June 13 the matter came before a Residential Tenancy Arbitrator on June (RTB file number shown on cover page of this decision). The Arbitrator determined that the ten day Notice to End Tenancy for unpaid rent was a valid Notice and had ended the tenancy. The Arbitrator issued an immediate (two days from service) Order of Possession to the landlord.

The Arbitrator determined that given the fact that the ten day Notice had ended the tenancy, there was no need to decide whether the two month Notice was a valid Notice or not.

The tenants vacated the rental unit on June 15, having received notice of the Arbitrator's decision but without having been served with the Order of Possession.

The purchaser C.J. declined to complete the purchase because the landlord had failed to give up vacant possession on the June 1 possession date set by the agreement. C.J. "sued" the landlord in the Civil Resolution Tribunal (CRT) for \$4083.78 damages flowing from the landlord's fundamental breach of the purchase and sale agreement. CJ was successful and was awarded \$4179.28, after adding interest and filing fees (see CRT file # on cover page of this decision).

The tenants were not third parties in that proceeding though the rules of the CRT allow for a respondent to make a claim over against a third party (Rule 74 of the CRT Rules). The question of why the tenants weren't third parties in the CRT proceeding was a question not raised in this proceeding.

The tenants did not pay the April rent when it came due April 1, or any money after that.

The landlord claims that a new baseboard heater, which he paid the tenant Ms. C.S.'s nephew \$40.00 to install, was missing after the tenants moved out. He wants to recover the \$40.00. Both tenants say the heater is still there, though it may have been removed and reinstalled.

The tenants testify to a rather bizarre circumstance where, they say, on or about June 1, the landlord removed the exterior doors to the house, moved a fifth wheel trailer onto the front lawn and began living there. In response the landlord says he only lived there on weekends, though the trailer remained.

The tenants also say the landlord publish severely critical and slanderous material about the tenants on the social media area of the internet. They state that it caused them difficulty in finding an new rental accommodation. In response the landlord says he is entitled to “free speech.”

Analysis

It is apparent this tenancy ended as a result of the ten day Notice to End Tenancy for unpaid rent, pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”); the Notice that was upheld in the arbitration hearing last June. As the Notice was received April 4, and as the tenants failed to either pay the April rent within five days or have the Notice cancelled, the tenancy ended ten days later; April 15, 2018.

Rent

The tenants were obliged to pay the April rent of \$1200.00. Further, as they remained in possession in May, they were obliged to pay occupation rent of \$1200.00. They continued to occupy the rental unit until about June 15. In my view it was not a reasonable likelihood that the landlord would be able to re-rent the home for any part of the remainder of June and so I find the landlord is also entitled to occupation rent of \$1200.00 for the entire month of June.

Heater

The competing, uncorroborated testimony about this item cannot reasonably be differentiated. I find that the landlord has failed to prove entitlement to this item of the claim.

Damages for Loss of Sale

The evidence clearly demonstrates that the tenants’ failure to give up possession of the home, even though their tenancy had ended, cause the purchase and sale agreement to collapse. The tenants are responsible for loss suffered by the landlord as a result.

I dismiss the suggestion that the landlord’s actions in June: removing doors, living on the front lawn or slandering the tenants in social media, inhibited them from finding new accommodation. Frankly, there is no evidence of their effort to find a new place or that

any such effort had been rebuffed in any way because of the landlord's actions. In addition, this tenancy ended April 15 and it was a month and a half until the complained of actions started up. The tenants could have been attempting to secure a new place during that time, in the event their claim to cancel either of the two Notices failed.

I have some concern that the landlord is advancing this item of the claim based on an assessment of loss that was made by the CRT adjudicator without the participation of the tenants. However, the tenants did not take issue with the amount of the award made to the purchaser by the CRT and which the landlord claims.

I therefore award the landlord \$4083.78 for damages suffered by him due to the tenants' overholding.

Conclusion

The landlord is entitled to a monetary award of \$7683.78 plus recovery of the \$100.00 filing fee. He will have a monetary order against the tenants jointly and severally in the amount of \$7783.78.

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: January 14, 2020

Residential Tenancy Branch