

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application from the landlords for a monetary order as compensation for unpaid rent, compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

While the landlords' original application did not include specific application to retain the security deposit, during the hearing the parties agreed to an amendment to the application whereby retention of the security deposit is now included.

At the outset of the hearing the landlords withdrew from the original application the claim for \$400.00 for time and gas, and wages lost from preparation of the application.

Issues to be decided

- Whether the landlords are entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy was from November 1, 2008 to October 31, 2009. The tenancy agreement provides that the tenant would vacate the unit at the end of the fixed term. Rent in the amount of \$1,495.00 was payable in advance on the first day of each month. The tenancy agreement also provides that the tenant will pay a 60% share of the cost of monthly utilities. A security deposit of \$747.50 was collected on October 17, 2008.

Specific aspects of the landlords' claim are as follows:

\$250.00 – @ \$50.00 per month, the additional rent claimed as a result of tenant “JM’s” move into the unit for the 5 month period from June to October 2009;

\$3,150.00 – @ \$1,050.00 per month, the total amount of rent lost as a result of the early termination of a fixed term lease by another resident in the building who claimed her move was prompted by the conduct and behavior of tenant “JM”;

\$80.51 – cost of advertising for new renters in the unit vacated by the resident, as above;

\$233.78 – water / sewer & hydro utilities still outstanding;

\$50.00 – the filing fee.

Total: \$3,764.29

Analysis

In relation to the landlords' application for compensation arising from tenant “JM’s” move into the unit, the subject residential tenancy agreement provides as follows:

Additional Occupants

No person, other than those listed in paragraph 2 above, may occupy the rental unit. A person not listed in paragraph 2 above who resides in the rental unit for a period in excess of fourteen cumulative days in any calendar year will be considered to be occupying the rental unit contrary to this Agreement and without right or permission of the landlord. This person will be considered a trespasser. A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such person to become an approved occupant. Failure to apply and obtain the necessary approval of the landlord in writing is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy after proper notice.

Further, Residential Tenancy Policy Guideline #13 speaks to “Rights and Responsibilities of Co-tenants,” and provides in part as follows:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

There is no evidence that the parties entered into either a written or verbal agreement whereby “JM” was recognized as a tenant. However, it appears that the landlords were aware of “JM’s” presence in the unit and determined that it would be problematic to address the matter during the remainder of the fixed term. Instead, the landlords chose to let matters be until such time as the lease expired. In the result, I find there are no grounds whereby the landlords are entitled to compensation of \$250.00 arising from “JM’s” 5 month stay in the unit, and this aspect of the application is hereby dismissed.

As to the claim for loss of rental income resulting from the early termination of her lease by another resident in the building, the landlords had the option of filing for dispute resolution specifically in regard to that resident, seeking compensation for loss of rental income. Additionally, that resident herself had the option of filing for dispute resolution, seeking compensation for an alleged breach of the right to quiet enjoyment arising from the conduct of the tenant(s) who are the subject of this current dispute. However, neither such application is before me. In view of the evidence before me, I find no statutory basis for the landlords’ claim to compensation of \$3,150.00 from the subject tenants, arising from loss of rental income following the premature departure from the fixed term by the other tenant. I therefore dismiss this aspect of the landlords’ claim.

Similarly, the landlords’ application to recover advertising costs of \$80.51 in relation to the early departure of the other resident, is the subject of an application which could

have been made in relation to that particular resident. However, I dismiss the landlords' application for such compensation where it concerns the subject tenant(s).

As for outstanding utilities in the total amount of \$233.78 (water / sewer: \$174.94 & hydro: \$58.84), the tenant did not dispute that her share of payment has still not been made. Once again, the tenancy agreement provides that her share is 60%. The landlords argue that the tenants' share should be greater, in part because of the early departure of the other resident in the adjacent unit. However, in the absence of any evidence of an agreement between the parties to the contrary, I find that the tenant(s)' share is limited to 60% which is calculated to be \$140.27 (60% x \$233.78).

As the landlords have achieved some success in their application, I find they are entitled to recover the \$50.00 filing fee.

In summary, I find the landlords have established entitlement to a monetary order in the total amount of \$190.27 (\$140.27 + \$50.00). I order that the landlords may withhold this amount from the security deposit, and I order the landlords to repay the balance to the tenant(s) in the amount of \$557.23 (\$747.50 - \$190.27) plus interest on the original amount of the security deposit of \$2.33, resulting in a total repayment of \$559.56 (\$557.23 + \$2.33).

Conclusion

Pursuant to all of the above, I hereby order that the landlords may withhold **\$190.27** from the security deposit. I order the landlords to repay to the tenant(s) the balance of the security deposit plus interest in the total amount of **\$559.56**.

DATE: February 9, 2010

Dispute Resolution Officer