



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – CNC, CNR, MNDC

For the landlord – MND, MNR, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. At the outset of the hearing the tenant withdrew his application to cancel the notice for cause and the Notice for unpaid rent as he has since moved from the rental unit. The landlord did not voice any objections to this section of the tenants' claim being withdrawn.

The landlord seeks a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, a Monetary Order for unpaid rent and seeks to recover his filing fee for this Application. During the hearing the landlord withdrew his application for a Monetary Order for damage as he states these repairs have not yet been carried out. The tenant did not voice any objections to this section of the landlords' claim being withdrawn.

The tenant served the landlord in person on July 20, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenant in person on August 06, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started either on August or September, 2006. The written tenancy agreement was with a previous tenant who originally resided at the house. This original tenant had roommates who stayed after he moved out and the tenant attending the hearing was a roommate of these tenants. The tenant and landlord confirm that the tenant and his two roommates (one of which was his brother) paid a monthly rent of \$1,500.00 per month and they each paid an equal share of \$500.00. The tenant states he did pay a \$250.00 security deposit to one of his roommates but agrees that the landlord was not given this.

The tenants' application

The tenant testifies that the landlord gave him an illegal 30 Day Notice to End Tenancy. The landlord had provided a hand written sheet which stated he wanted the tenants to move out as he intended to carry out renovations and repairs to their unit. The tenant states his roommates became concerned about this Notice and moved out leaving the tenant to pay rent alone for July, 2010. The tenant states he was unable to afford all the rent on his own and so decided he could not afford to pay any rent as he would also have to find alternative

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accommodation. The tenant agrees that he did not pay rent for July and August 2010 and states he moved from the rental unit on August 02, 2010. The tenant claims he was forced to move from the rental unit early as the landlord cut the power off to the unit and prevented the tenant removing the last of his belongings stored in the garage.

The tenant testifies that he had to rent another unit on a six month lease at a monthly rent of \$1,000.00. He claims if the landlord had not given the tenants this illegal Notice to End Tenancy but had given them the correct Two Month Notice to End Tenancy his brother would now still be living with him and his share of his new rent would be the same as his old rent. Therefore the tenant seeks to recover compensation from the landlord of \$1,500.00 for this additional rent he will incur for six months. The tenant also seeks compensation of \$1,000.00 from the landlord for putting them all under pressure to move and forcing him to move from his rental unit. The tenant applied to dispute this Notice but moved from the rental unit before the hearing took place.

The landlord testifies that he did make a mistake with the 30 Day Notice served to the tenants. The landlord claims that he did turn off the power to the rental unit after the tenant had moved out as he did not want to incur additional utility costs. He states he was aware the tenant had some belongings stored in the garage but claims he thought the tenant had a key to the side door so he could get into the garage to open the main door to retrieve his belongings.

The landlords amended application

The landlord testifies that the tenant did not pay rent for July or August. The landlord served the tenant with a 10 Day Notice to End Tenancy on July 18, 2010 for unpaid rent. This Notice stated that the tenant had five days to pay the outstanding rent of \$1,500.00 apply to dispute the Notice or the tenancy would end on July 29, 2010. The landlord claims the tenant did not pay the outstanding rent but he did move out at the beginning of August, 2010. The landlord claims he was prevented from going into the rental unit by the tenant

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after he had moved out to clean the unit as the tenant called the police who told the landlord he was not to enter the unit until after a hearing took place for an Order of Possession based on an application by the landlord for an early end to tenancy on August 17, 2010. It was found at that hearing that the tenant had moved out on August 01, 2010 however as he had not returned the keys to the landlord or removed his belongings the landlord was granted an Order of Possession.

The landlord claims that when he did enter the unit on August 20, 2010, after he gained possession, he found a great deal of damage caused by the tenants that would require repairs which would be on going into September, 2010. The landlord wishes to deal with this at a separate hearing as he has been unable to carry out the repairs at this time and requires evidence for his claim as to the actual costs of the repairs. The landlord also seeks to recover a loss of rental income for September, 2010 due to the short time he had to get into the rental unit because the tenant called the police and prevented him gaining access even though he stated that he had moved out. The landlord agrees that one of the other tenants did pay \$100.00 towards the rental arrears for July and he now seeks to recover a total sum of \$4,400.00 for July, August and September, 2010.

The landlord states the tenant owes unpaid utilities of \$101.05 for the June and July, 2010 invoices. This is the tenants 66% share of the total utility bill of \$153.11.

The landlord testifies that he also rented out an adjoining unit to long term tenants at a monthly rent of \$900.00. He claims these tenants gave him Notice to End Tenancy and when the landlord asked why they were giving notice they claimed it was because of the neighbouring tenants actions such as damaging the deck, firing pellet guns into the yard and pool, playing loud music inside and out at all hours, noisy drunken friends coming and going late at night, pulling their washer and dryer out of shared garage space and leaving it in the driveway, late payment of shared utilities, unable to help with yard work and leaving garbage spread outside. These tenants have put their concerns in writing for the landlord in

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evidence. The landlord states that he felt it would be unfair to re-rent this unit to new tenants while the problems still existed with this tenant. He claims he decided to renovate that rental unit instead. The landlord states these tenants moved out at the end of April, 2010.

Originally he was seeking to recover four months lost revenue from this tenant for this other unit but has decided that may be extreme and has reduced his claim to one month lost revenue of \$900.00.

The tenant disputes the landlords claim. The tenant testifies that throughout August he was still the legal tenant of his unit and he told the landlord he could not enter his unit. The tenant agrees that he did have to call the police to prevent the landlord entering the unit. The tenant claims that although the landlord did not have legal possession of his unit until after the hearing on August 17, 2010 he still cut off the power. The tenant claims he could have moved out sooner if the landlord did not cut the power off and therefore he should not be held responsible for rent for August, 2010. The tenant states he only owes his share of rent of \$500.00 for July, 2010 and states he owes nothing for September as he had moved out before September, 2010.

The tenant states he does take some responsibility for some damage to the unit such as the pellet holes inside and outside the unit and the damaged door screen. However, the tenant states the rest of the damage was already there when he moved in and the landlord failed to do a move in or move out condition inspection. Therefore, the tenant argues he cannot be held responsible for rent for September, 2010.

The tenant claims he cannot be held responsible for a loss of rental income for the other tenants unit as the landlord was doing renovations in that unit for two months after the tenants moved out and did not attempt to re-rent it during that time.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for compensation for his higher rent at his new unit due to an illegal Notice given to them by the landlord forcing his roommates to move out; It is my decision that the tenant did dispute this Notice however he choose to move out before the hearing took place. Therefore, it was his decision to end the tenancy. I refer both parties to the Residential Tenancy Policy Guidelines #13 which states:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

While I accept that the tenancy agreement was not in place for these tenants but rather the original tenant these tenants have been paying rent to the landlord and as such a tenancy existed between them as co-tenants.

If the tenant had not moved out and had waited for the hearing to take place it would have been likely that this 30 Day Notice to End Tenancy would have been cancelled as the landlord had not used the correct forms.

I also find the tenant admitted that he had moved from the rental unit on August 01, 2010 and the landlord turned the power off after this date. When a tenancy ends it is the tenants' responsibility to remove his belongings on the date he moved out. If he has left belongings after his move out date then a landlord can treat them as abandoned. Consequently, I find the tenants' application has no merit and his claim for \$2,500.00 compensation is dismissed.

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With regards to the landlords claim for unpaid rent; as stated above co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. Therefore the landlord is entitled to recover the full amount of rent for July, 2010 of **\$1,500.00** from the tenant pursuant to s. 67 of the *Act*.

With regards to the landlords claim for unpaid rent for August and September, 2010; at a previous hearing the tenant stated that he had moved into his new rental unit on August 01, 2010, The tenant now states he moved on August 02, 2010 but left his belongings at the unit and therefore had full possession of the unit until the hearing that was held on August 17, 2010 where it was determined that the tenant had moved from the unit but had left some of his personal belongings behind. As the landlord was unable to re-rent the unit for August, 2010 because the tenant had left his belongings behind and had prevented the landlord obtaining access to the unit despite admitting that he had moved out on August 01 or 02, 2010, I find the landlord is entitled to recover rent for August, 2010 of **\$1,500.00** from the tenant pursuant to s. 67 of the *Act*.

With regard to the landlords claim for unpaid utilities, I find the landlord has presented no invoices to confirm the amount owed by the tenants. The Burden of proof lies with the claimant in this matter. As the landlord has provided no evidence to support his claim this section is dismissed without leave to reapply.

As the tenant had moved out the landlord attempted to mitigate his loss by shutting off the power to the unit and I accept the landlords' testimony that he thought the tenant had a key to the side door of the garage so the loss of power would not have prevented him gaining access to his belongings or he could have contacted the landlord to gain access to the garage. I find as the landlord has yet to provide evidence that the tenant caused damage to the rental unit I will not deal with his loss of revenue for September, 2010 at this hearing but give him leave to reapply for this portion of his claim.



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With regards to the landlords claim for a loss of rental income for the other rental unit, I find in this instance that the landlord did not attempt to mitigate his loss in this matter by re-renting the unit after these tenants moved out. Instead he choose to carry out renovations to this unit for two months after the other tenants vacated. Consequently, it is my decision that the landlord is not entitled to recover a loss of rental income of \$900.00 from the tenant and this section of his claim is dismissed without leave to reapply.

As the landlord has been partially successful with his amended monetary claim I find he is entitled to recover the **\$100.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord is therefore entitled to a Monetary Order for **\$3,100.00**

Conclusion

I HEREBY FIND in partial favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,100.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenants claim is dismissed without leave to reapply.

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: September 09, 2010.

Dispute Resolution Officer