Decision

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

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee.

The landlord was represented in the hearing and gave affirmed testimony. Of the 2 tenants, only tenant "NB" was present and gave affirmed testimony. However, tenant "NB" testified that tenant "JM" was aware of this proceeding.

The landlord mailed the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail in one envelope addressed to both tenants, to a forwarding address provided by tenant "NB" for himself only. Tenant "JM" did not provide the landlord with a forwarding address and his current address is unknown.

Issues to be decided

- Whether the hearing package was properly served on both tenants
- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from April 1, 2009 to March 31, 2010. Thereafter, tenancy continued on a month-to-month basis. Initially, monthly rent was $2,300.00, but it was increased by $73.00 to $2,373.00 effective April 1, 2010. A security deposit of $1,150.00 was collected on March 30, 2009. A move-in condition inspection and report were completed on March 20, 2009. The parties do not dispute that the unit was in new condition at the start of this tenancy.

By way of e-mail dated August 30, 2010, tenant "NB" gave the landlord "our 30 days notice" of intent to vacate the unit effective September 30, 2010. By e-mail reply dated August 31, 2010, the landlord informed tenant "NB" that "We require your signature on the notice for it to be valid." Additionally, in her e-mail the landlord informed tenant "NB" that tenant "JM" had advised her of his wish to "remain living in the suite," and the

landlord asked tenant “NB” if he knew whether tenant “JM” had “found a potential roommate yet?” and further, stated that “We’ll need to approve him.”

Subsequently, by way of letter signed and dated September 3, 2010, tenant “NB” gave the landlord notice of intent to end the tenancy effective on or before September 30, 2010. The tenant testified during the hearing that he actually vacated the unit sometime between September 4 & 8, 2010, and that he did not know when co-tenant “JM” vacated the unit. “JM” did not ever provide the landlord with his forwarding address, and it was not until January 27, 2011 when tenant “NB” provided his own forwarding address.

The landlord issued a 1 month notice to end tenancy for cause dated September 27, 2010. The notice was served by posting on the unit door on that same date. A copy of the notice was submitted into evidence. The date shown on the notice by when the tenants must vacate the unit is October 31, 2010. Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord’s property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

The tenants did not file an application to dispute the 1 month notice.

The tenants paid rent only up to the end of September 2010, and the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated October 7, 2010. The notice was served by way of being deposited on the kitchen counter within the unit on that same date. A copy of the notice was submitted into evidence. The date shown on the notice by when the tenants must vacate the unit is October 17, 2010. The tenants did not file an application to dispute the 10 day notice.

Thereafter, when the landlord entered the unit on October 20, 2010, it was apparent that neither tenant any longer occupied the unit, and the landlord found there was need of extensive cleaning and repairs. Evidence submitted by the landlord includes, but is not limited to, photographs taken of the unit following its apparent abandonment. Neither tenant was available to participate in the completion of a move-out condition inspection and report. The required cleaning and repairs have now been completed.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

As to service of documents, section 89 of the Act speaks to "**Special rules for certain documents**," and provides in part as follows:

> 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 or Part 5, when required to be given to one party by another, must be given in one of the following ways:
>
> (a) by leaving a copy with the person;
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> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
>
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
>
> (e) as ordered by the director under section 71(1) *[director's orders: delivery and service of documents].*

Based on the documentary evidence and testimony of the parties, I find that tenant "NB" was properly served with the landlord's hearing package at a forwarding address he provided. Accordingly, I find that I am able to proceed to hear the landlord's application naming tenant "NB."

However, as tenant "JM" was not served according to the statutory provisions set out above, the landlord's application naming him is hereby set aside with leave to reapply.

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act addresses **Form and content of notice to end tenancy**, and provides as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) *[tenant's notice],* state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Following from the above statutory provisions, I find that tenant "NB's" notice to end tenancy was only properly given by way of letter dated September 3, 2010, and that pursuant to the Act, such notice would not be effective before October 31, 2010. However, consistent with the 10 day notice dated and issued October 7, 2010, the landlord seeks compensation for unpaid rent limited to the period from October 1 to 17, 2010. In the result, I find that the landlord has established this entitlement in the pro-rated amount of $1,301.32.

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

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.

> Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages related to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

There is insufficient evidence that both tenants had vacated the unit by the end of September 2010, and further, there is no evidence that the landlord and tenant "JM" entered into a separate tenancy agreement in any manner, following tenant "NB's" apparent decision to proceed on his own to vacate the unit. In the result, I find that both tenants are "jointly and severally liable for any debts or damages relating to the tenancy."

The remaining aspects of the landlord's claim are set out below:

$65.00: *combined fees for NSF and late payment of rent.*

$588.00: *general cleaning in the unit.*

$112.00: *carpet cleaning.*

$110.00: *fob replacement.*

$168.00: *key replacement.*

$3,500.00: *repair unit back to original condition.*

$100.00: *filing fee*.

Sub-total: $4,643.00

Section 35 of the Act addresses **Condition inspection: end of tenancy**. Section 36 of the Act speaks to **Consequences for tenant and landlord if report requirements not met**, and provides that the right of the landlord to claim against a security deposit or a

pet damage deposit, or both, for damage to residential property is extinguished "unless the tenant has abandoned the rental unit." In the circumstances of this dispute, having considered all the documentary evidence and testimony, despite efforts made by tenant "NB" to provide proper notice to end the tenancy, I find on a balance of probabilities that by their actions the tenants effectively both abandoned the unit. Specifically, tenant "NB" appears to have left the unit without specifying a more particular time than on or before September 30, 2010, and did not provide a forwarding address until late January 2011. Tenant "JM's" date of departure and forwarding address are both unknown.

In summary, I find on a balance of probabilities that the landlord has established entitlement to the full amount claimed in the application. The total entitlement established is therefore $5,944.32 ($1,301.32 + $4,643.00). I order that the landlord retain the security deposit of $1,150.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of $4,794.32 ($5,944.32 - $1,150.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **$4,794.32**. This order may be served on the tenant, 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*.

DATE: March 16, 2011

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Residential Tenancy Branch