



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

MNR, MNSD, MNDC, RPP, FF

Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit; and, recovery of the filing fee. The tenant applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; return of the security deposit; return of personal property; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Preliminary matters

The landlord amended his application to reduce the monetary claim to the amount of unpaid rent for November 2010. This amendment was accepted.

The landlord stated that he did not received the tenant's evidence by registered mail. The tenant's evidence was described to the landlord and the landlord stated that he was prepared to proceed without having received the evidence.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for unpaid rent for the month of November 2010?
2. Is the tenant entitled to compensation for damages or loss related to this tenancy?
3. Should the security deposit be returned to the tenant or retained by the landlord?
4. Is it necessary to issue an order with respect to return of personal property?

Background and Evidence

The tenancy began August 16, 2003 and the tenant paid a \$375.00 security deposit. The rent was initially \$750.00 but had increased to \$900.00 over the duration of the tenancy. The tenant passed away in September 2010. The deceased daughter is the executrix of the tenant's estate (herein referred to as the executrix). The rental unit was a bio-hazard after the tenant's death. The executrix authorized the landlord and the strata to dispose of her father's possessions in the rental unit and initially the executrix began dealing with remediation efforts; however, the strata became involved and a restoration company was called in to remediate the unit. The strata corporation made an insurance claim and the executrix paid the \$2,500.00 deductible.

The landlord is claiming loss of rent for the month of November 2010. The landlord received verbal notification that the unit was remediated October 29, 2010 but did not receive a clearance letter until November 18, 2010. The landlord submitted that advertising could not commence until the unit was cleared for occupancy. The rental unit remains vacant as at the date of this hearing with the explanation that the rental unit cannot be rented to more than two people.

The executrix objected to having to pay rent for November 2010 on the basis the landlord did not make sufficient efforts to re-rent the unit. The executrix submitted that she gave the landlord written notice to end the tenancy on October 4, 2010 with an effective date of October 31, 2010.

The executrix is claiming for a refund of the rent paid for October 19 – 31, 2010 in the amount of \$348.00. The executrix submitted that the landlord changed the locks to the rental unit on October 19, 2010 despite informing the landlord that the estate was the tenant and the tenancy remained in effect until such time the tenancy ended under the Act.

The landlord acknowledged that the locks were changed. The landlord explained that the rent for October 2010 was paid after the locks were changed, the tenant's belongings had already been destroyed at the request of the executrix and the unit was vacant. Further, the landlord wanted to keep the executrix out of the rental unit since it was still a bio-hazard.

The executrix refuted the landlord's position by explaining that three days before the locks were changed an attempt was made to pay rent to the landlord using a courier but the landlord refused to accept the delivery. Further, the landlord phoned the lawyer for

the executrix immediately after the attempted courier delivery and learned that the courier attempted to serve the landlord with the rent.. The landlord proceeded to change the locks despite knowledge that the executrix had attempted to pay rent for October 2010. A second attempt was made to pay October rent which was successful.

With respect to personal property, the executrix claims that the tenant had a storage locker located at the residential property and she has not been provided the opportunity to verify the contents of the locker. The landlord claims he is unaware of any possessions in a storage locker and that the keys to the locker did not change.

Documentary evidence provided for this proceeding included the tenancy agreement; a portion of the deceased's will naming the executrix; communication to the landlord's agent from the executrix dated October 4, 2010; the written response from the landlord's agent dated October 8, 2010; various notices of entry during the month of October 2010; communication to the landlord's agent from the lawyer for the executrix dated October 28, 2010; the landlord's advertising receipts for advertisements received October 29, 2010; proof of the insurance deductible; and, the clearance letter of November 18, 2010.

Analysis

The Act applies to landlords and tenants under a tenancy agreement. The Act defines a tenant to include the estate of a deceased tenant and a former tenant. Upon the tenant's death I accept that the executrix was acting on behalf of the deceased's estate and the estate was the tenant under the tenancy agreement. Accordingly, the use of the word tenant refers to the deceased tenant and the estate of the deceased tenant.

A tenancy does not end upon the death of a tenant. Rather, the tenancy continues until such time it ends under section 44 of the Act and the rights and obligations of the landlord and tenant remain intact until such time the tenancy ends. Accordingly, the estate was obligated to pay rent for October 2010, which was eventually paid, and the estate was entitled to possession of the rental unit until such time the tenancy ended.

In addition to the tenant's entitlement to possession of the rental unit under section 28 of the Act, section 31 of the Act specifically prohibits a landlord from changing the locks to the residential property without giving the tenant the new keys.

In this case it is undisputed that the landlord changed the locks to the rental unit on October 19, 2010. Upon review of the landlord's letter of October 8, 2010 I find the landlord incorrectly took the position that he was entitled to return of the keys to the

rental unit. Upon hearing from the parties, I am satisfied the tenant attempted to pay rent for October 2010 before the locks were changed and the landlord knew of this attempt yet proceeded to change the locks. Even if an attempt to pay the rent had not been made, non-payment of rent does not entitle the landlord to change the locks to a rental unit. Rather, non-payment of rent puts the landlord in a position to end the tenancy by issuing a Notice to End Tenancy for Unpaid Rent which the landlord did not do in this case.

A landlord may take possession of a rental unit if it has been abandoned but I do not find abandonment in this case. Rather, I accept that the executrix had communicated to the landlord in writing that the tenancy would continue until October 31, 2010 and despite the landlord's requests for the keys in early October the executrix would not return them. Further, it is evident the landlord and executrix were in frequent communication with each other. Therefore, I find no basis to conclude the rental unit was abandoned.

I find that the landlord's decision to change the locks violated the right to possession by the estate and the landlord's actions violated the landlord's obligation to ensure new keys were provided to the tenant. I am satisfied that the value of this loss of the right to possession is equivalent to the rent paid for the days of October 19 – 31, 2010 and I award the tenant recovery of \$348.00 as claimed. Since the landlord had violated the Act and illegally regained possession before he was entitled, I find the landlord is now precluded from claiming loss of rent for November 2010 and I deny the landlord's claim.

Since the landlord has not established an entitlement to compensation from the tenant, the tenant's security deposit and accrued interest of \$388.28 must be returned to the tenant. Given the success of the tenant's application, I award the filing fee to the tenant.

In light of the above, I provide a Monetary Order to the tenant in the amount of \$786.28. The Monetary Order must be served upon the landlord and may be enforced in Provincial Court (Small Claims).

With respect to the tenant's personal property, I order the landlord to permit and enable the executrix to gain access to the storage area and access to the tenant's storage locker in order to verify the contents of the storage locker. Any costs to remove a lock shall be the responsibility of the tenant.

Conclusion

The landlord's application has been dismissed. The tenant's application for a Monetary Order of \$786.28 has been granted. The landlord is ordered to permit the tenant access to the tenant's storage locker.

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: March 02, 2011.

Residential Tenancy Branch