Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenants and two agents for the landlords.

At the outset of the hearing the agents for the landlord clarified the applicants had named the landlord and several agents. I have amended, with the applicant's permission, the tenants' Application to name only the corporate landlord and not any of the agents.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss; for return of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The applicants submit the tenancy began on November 1, 2010 as a 1 year fixed term tenancy for a monthly rent of $1,050.00 due on the 1st of each month with only one of the applicants named as a tenant in the written tenancy agreement with a security deposit of $525.00 paid to the landlord.

The applicants further submit that in May 2011 the named tenant took the other applicants to meet with an agent of the landlord who, they testified, provided verbal approval to the tenant that she could sublet the rental unit to the other two applicants.

The landlord's agent testified that the person the tenant and other applicants spoke to does some work for the landlord but is not licensed to enter into tenancy agreements. The landlord did not indicate how an employee of the landlord is licensed to enter into tenancy agreements or how tenants would know the difference between various agents of the landlord.

The landlord asserts that written permission was not given to the tenant to sublet her rental unit. The applicants testified the landlord's agent they spoke to said that no written approval was required and they proceeded to accept the sublet from the primary tenant.

The two applicants paid the primary tenant a security deposit of $200.00 and began paying rent directly to the landlord effective June 1, 2011. The landlord asserts that payment of rent is not monitored and he cannot be sure that these applicants ever paid any rent directly to the landlord.

After rent was not paid on August 1, 2011 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on August 5, 2011. The landlord submits that on or about August 6, 2011 his agents were made aware that the named tenant was no longer occupying the rental unit. On August 5, 2011 the tenants were notified in writing that the key fobs had been changed and the door lock would be changed on August 8, 2011

The parties agree that the unnamed tenants were then summoned to a meeting with the primary agent in the office on August 9, 2011 and while they were meeting with him another agent for the landlord changed the locks on the rental unit.

During the meeting the landlord advised the unnamed tenants of this and if they want access to the rental unit and their belongings they must pay rent for August 2011 and either enter into a new written tenancy agreement or sign an agreement to vacate the premises by August 31, 2011.

The applicants who are not named in the written tenancy agreement seek the following compensation:

Description	Amount
Loss of quiet enjoyment – July 2011	$210.00
Rent Abatement – August 2011	$1,050.00
Landlord ends a tenancy without grounds	$2,100.00
Renting storage after move out	$400.00
Forced moving expenses	$246.00
Total	$4,006.00

The applicant named as a tenant in the fixed term tenancy agreement seeks the following compensation:

Description	Amount
Double the Security Deposit	$1,050.00
Filing Fee	$100.00
Total	$1,150.00

Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As such, when faced with testimony from the applicants that the landlord agreed to a sublet and the landlord's dispute of this statement and in the absence of any written documentation providing the primary tenant with approval to sublet the rental unit, I find the primary tenant did not have the authority to sublet the rental unit.

Subsequently, as the landlord obtained rent for the month of August 2011 and accepted a notice to vacate the property by the other unnamed tenants, I find the parties established a verbal tenancy agreement for the month of August 2011 on August 9, 2011.

As a result, I find there are two distinct tenancies with separate disputes filed under the same Application. Despite the attendance of the tenant with the written tenancy agreement, I find that the interests of this tenant were not necessarily represented appropriately in this hearing.

For these reasons and in accordance with Residential Tenancy Branch Rule of Procedure 2.3 I find it is necessary to severe these issues and dismiss the items sought by the tenant with the written tenancy agreement, and grant her liberty to file a separate Application for Dispute Resolution seeking any compensation that she believes she may be entitled to as a result of her tenancy. As a result, I amend the named parties to this dispute to exclude the primary tenant.

As I have found the remaining applicants entered into a tenancy agreement with the landlord for August 9, 2011 only, I dismiss the portion of their application for compensation for loss of quiet enjoyment for the month of July 2011.

From the tenant's testimony they were renting from the tenant with the written tenancy agreement with this landlord and not from the landlord and as such the landlord cannot be held responsible for any compensation to the tenants. The tenants remain at liberty to seek compensation from the named tenant.

As I have found a new tenancy agreement was created between the two applicants and the landlord in August 2011, I find the landlord is entitled to rent for that month. Despite the tenants assertion that they couldn't live there any longer because the landlord's agent had entered the unit illegally, I find the tenants have failed to establish this and as they removed their belongings into storage on August 18, 2011 even though they had possession of the unit until August 31, 2011, I find the landlord cannot be held responsible for these charges.

As the tenants did sign the agreement to vacate the rental unit, I find they are responsible for their own moving costs. However, I find the landlord coerced them into doing so and once the tenants paid the rent for the month of August, 2011, the landlord had no right to withhold access to the rental unit or the tenants' personal belongings held within and as such, I accept the tenants had no choice but to end the tenancy to get their belongings back.

For this reason, I find the tenants are entitled to compensation in the form of aggravated damages for the non-pecuniary losses of physical inconvenience, humiliation, and mental distress in an amount equivalent to ½ month's rent.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$525.00** comprised of aggravated damages.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: March 06, 2012.

Residential Tenancy Branch