Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MND, MNSD, FF
MNDC

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

This decision refers to 3 separate tenants: “AM,” “PM” and “MM.” “AM” is the mother of “PM” and “MM.”

Pursuant to a written tenancy agreement, what eventually became a month-to-month tenancy began on June 1, 2007. 2 tenants are named in the tenancy agreement: “PM” who is the applicant / respondent in this current dispute, and his mother, “AM.” Monthly rent of $1,100.00 was due and payable in advance on the first day of each month, and a security deposit of $550.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Evidence variously submitted by the parties includes copies of several letters hand written by the tenants which concern notice to end tenancy. These letters include, but are not limited to the following:

- 2 separate letters, both of which are dated February 12, 2009, from “PM” and “AM.” In both letters the tenants give notice to the landlord that they will be vacating the unit effective March 31, 2009. One of these letters is signed as having been “received Feb 13/09” by “CB,” the landlord’s Resident Manager, whereas the other letter is date stamped as having been received by the landlord on February 19, 2009.

- a letter dated February 6, 2009 from “PM” and “AM” in which the tenants inform the landlord that they wish to stay in the unit for “one more month. Leaving April 30/09.” While this letter appears to be date stamped as having been received by the landlord on March 09, 2009, there is also a manual notation to the effect that the letter was received on “March 6/09.”

- a “To Whom it May Concern” letter dated October 17, 2013 and signed on October 22, 2013, written by “LS,” in which “LS” states that “PM” moved out of the rental unit and into a different address with her effective April 1, 2009.

- a letter dated April 4, 2009 from “PM’s” brother, “MM” and “PM’s mother, “AM” in which “MM” and “AM” state that they are “withdrawing our prior notice to vacate” the unit effective April 30, 2009. Further, in their letter, “MM” and “AM” state, “We would like to continue living there on a month to month basis.” This letter is date stamped as having been received by the landlord on April 15, 2009.

Subsequent to all of the above, arising from a direct request application by the landlord, an *ex parte* proceeding took place where the attendance of neither party is required. In the result, pursuant to a decision dated November 27, 2009, an order of possession and a monetary order were issued in favour of the landlord (file # 746237). Only “AM” was named as a tenant / respondent in the direct request proceeding and, accordingly, the order of possession and the monetary order name only “AM” and not either “PM” or “MM” as a tenant / respondent.

It is unknown whether the order of possession and the monetary order were served on the tenant(s). In any event, a move-out condition inspection report was completed by the landlord without the apparent presence of any tenant(s) on January 8, 2010.

During the hearing “PM” testified that he himself vacated the unit effective March 31, 2009. There is no conclusive evidence that a written tenancy agreement was entered into between the landlord, and “AM” and “MM” after such time as “PM” claims to have vacated the unit. Neither is there any evidence documenting the history related to

payment of rent subsequent to the time when “PM” claims to have vacated the unit. Further, there is no evidence of forwarding addresses having been provided to the landlord in writing by either “PM,” “AM” or “MM” at such time as their respective tenancies may have ended.

“PM” filed an application for dispute resolution on October 9, 2013. In his application “PM” claims that the landlord improperly identified him to a collections agency in regard to unpaid rent and other miscellaneous compensation sought by the landlord. As a result, “PM” claims that his credit rating has suffered. After being served with “PM’s” application, the landlord noted his mailing address and on October 29, 2013, the landlord filed a cross application for dispute resolution.

Analysis

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

Residential Tenancy Policy Guideline # 13 speaks to “Rights and Responsibilities of Co-Tenants,” 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.
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> Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.
>
> 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 relating 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.

Section 60 of the Act addresses **Latest time application for dispute resolution can be made**, as follows:

> 60(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
>
> (2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
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> (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Further, Residential Tenancy Policy Guideline # 16 speaks to "Claims in Damages," in part as follows:

> **Limitation Periods for Filing Claims**
> There are three statutes which provide limits within which a claim must be filed: the Limitation Act, and the Residential Tenancy Act and Manufactured Home Park Tenancy Act. The interaction of these statutes means that, even if a claim is filed within the two years permitted under the Legislation, the Limitation Act may prevent it from being heard if it relates to something that occurred more than two years before the claim was filed.
>
> *The Limitation Act*
> The Limitation Act provides that certain specified claims must be filed within specified time limits or the right to make those claims will be ended. It is very important to note that there are many variables which could change the specified time limits both for damages and for debt.
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> The law with regard to when the limitation period begins, how it continues, whether it is extended, and whether it governs in any particular case is

complicated. Since failure to make a claim within the specified period(s) will end the claim, a person who is not certain about the applicable time limits in the Limitation Act should obtain a legal opinion.

I make no finding as to the specific date "PM" vacated the unit. However, if I were to find that his tenancy ended April 30, 2009 rather than March 31, 2009, then the 2 year period available to him for filing an application expired April 30, 2011.

Even if I were to find that his tenancy ended somewhat later on December 31, 2009, then the 2 year period available to him for filing an application expired on December 31, 2011. In the result, as "PM's" application was filed on October 9, 2013, I find that it was filed outside the statutory 2 year period available. Accordingly, I find that as both applications fall outside the jurisdiction of the Act, they are both hereby dismissed.

Conclusion

As neither application has been filed within the statutory time limit, jurisdiction to make findings is declined and both applications are hereby dismissed.

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: January 08, 2014

Residential Tenancy Branch