



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on November 17, 2015. The Landlords filed seeking a \$1,330.00 Monetary Order for unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the *Act*, Regulation or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by both Landlords; the Landlord's observer; and all three of the named respondents. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Two packages of evidence were received from the Landlords as follows: on February 3, 2016 the Residential Tenancy Branch (RTB) received 8 pages of evidence; and on February 10, 2016 the RTB received 7 photographs. The Landlords affirmed they served all of the Respondents with copies of the same documents and photographs that they served the RTB. The Respondents acknowledged receipt of that evidence and no issues regarding service or receipt were raised. As such, I accepted the Landlords' relevant submissions as evidence for these proceedings.

The Respondents did not submit evidence in response to the Landlords' application. Rather, they indicated they filed their own application and submitted evidence for their own file. That matter was not scheduled to be heard during this hearing.

Everyone was provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Are the named Respondents Tenants or occupants?
2. If the Respondents are occupants does the *Residential Tenancy Act* (the *Act*) pertain to their occupancy?
3. Has the Landlord proven entitlement to monetary compensation for unpaid rent against any of the named respondents?

Background and Evidence

The rental unit was described as being a house with two separate self-contained rental units. One 3 bedroom unit was located on the main floor (lower level) of the house which was built above ground, and the second unit was in the upper or second level of the house. This hearing pertained to matters relating to the main floor rental unit.

The Landlords entered into multiple consecutive written fixed term tenancy agreements regarding the main floor rental unit which began on December 1, 2012. Initially rent was payable on the first of each month in the amount of \$1,330.00. On or around December 1, 2012 the Tenants who were named on the first tenancy agreement paid \$650.00 as the security deposit. A move in condition inspection report form was completed on December 4, 2012.

The Tenant, M.B., who was not named as a respondent to this dispute, was listed as a Tenant on every written tenancy agreement from December 1, 2012 up to and including the last tenancy agreement which was signed on March 26, 2015 for a tenancy that began on April 1, 2015.

The last written tenancy agreement listed M.B. and G.M. as Tenants for a tenancy that began on April 1, 2015 and was for a fixed period of one year. G.M. was named as a respondent to this dispute. Rent as of April 1, 2015, was payable in the amount of \$1,330.00 and was due on or before the first of each month.

The Landlords testified they did not complete another move in inspection report each time a new tenancy agreement was entered into. In addition, they stated they did not return or collect additional money for the security deposit. They simply retained the \$650.00 deposit they had initially collected at the start of the tenancy in December 2012.

The two other named respondents, B.L. and J.W., were not named as Tenants on the last tenancy agreement. The Landlords did not know when B.L. or J.W. began to occupy the rental unit after the last agreement was signed. They argued there were so

many people moving in and out of the rental unit all of the time they could not keep track of the exact dates when those occupants arrived.

The Landlords submitted that when November 1, 2015 rent was not paid in full they issued the Tenant(s) a 10 Day Notice to end tenancy for unpaid rent on November 2, 2015. They stated B.L. attempted to give them a partial payment of \$433.33 and they refused that payment as it was not the full \$1,330.00 which was due.

The Landlords testified they regained possession of the rental unit on November 11, 2015 when the keys were returned. The Landlords stated that as of this hearing on March 1, 2016 they have not re-rented the rental unit.

B.L. testified he had lived in the rental unit at different times. He asserted he was listed as a Tenant on a previous tenancy agreement and then moved out. He confirmed he had not been living in the rental unit on March 26, 2015 when the latest tenancy agreement was created and signed. B.L. asserted he had moved back into the rental unit sometime in July 2015.

B.L. stated he had requested to be listed on the tenancy agreement in July 2015 when he moved back in. He said he met with the Landlord R.W. during which he had listed himself on a copy of the last tenancy agreement. He asserted the Landlord took that copy and never returned it. B.L. confirmed that neither Landlord nor either Tenant, G.M. nor M.B., initialled the tenancy agreement to add him as a Tenant.

B.L. confirmed he attempted to pay the Landlord \$433.33 for November 2015 rent. He said that was his portion of the rent based on his calculations of what 1/3 of the rent was because there were three bedrooms in the rental unit.

J.W. testified she had never been added to a written tenancy agreement while living at the rental unit.

G.M. testified he had entered into and signed the final written agreement. He submitted that he moved out of the rental unit sometime before or after November 1, 2015, he did not know the exact date. He confirmed he did not serve the Landlords a written notice that he was moving out or that he was ending his tenancy.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas. In order to make a determination on this application I must first be satisfied that the parties named in this dispute meet the definition of landlord and tenant.

Section 1 of the Act defines a landlord, in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) **a person, other than a tenant occupying the rental unit, who** [emphasis added]
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

A tenancy agreement may be amended to change or remove a term, other than a standard term, only if both the landlord and tenant agree to the amendment in writing, pursuant to section 14(2) of the *Act*.

An occupant is defined in Residential Tenancy Policy Guideline 13 where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent/landlord(s), tenant(s), and occupant) agree to enter into a written tenancy agreement to include the new occupant(s) as a tenant.

Based upon the aforementioned, I find the respondents B.L. and J.W. do not meet the definition of a tenant. Rather B.L. and J.W. were occupants as they were not named as tenants in the last tenancy agreement which was signed on March 26, 2015. Thus, there is not a tenancy agreement in place between the Applicant Landlords and the

Respondents B.L. and J.W., to which the *Residential Tenancy Act* applies. Accordingly, this application cannot proceed against B.L. or J.W.

In addition to the above, I find the Landlords' application may proceed against the respondent Tenant, G.M, who was properly named in the tenancy agreement as a Tenant. Accordingly, the style of cause of the monetary order has been amended to remove B.L.'s and J.W.'s names, pursuant to section 64(3)(c) of the Act.

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

The undisputed evidence was the Occupant, B.L. attempted to pay the Landlords \$433.33 for November 2015 which was not the full amount of \$1,330.00 owed for rent. The Landlords served the Tenant(s) or Occupant(s) with a 10 Day Notice to end tenancy and the rental unit was vacated.

When a Tenant is served a 10 Day Notice they have five days to pay the rent in full or file an application to dispute the Notice. Their obligation to pay the rent in accordance with the tenancy agreement does not end if the tenant vacates the rental unit in accordance with the Notice. Accordingly, I find the Landlords have met the burden of proof and I grant their application for unpaid rent that was due November 1, 2015 in the amount of **\$1,330.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$650.00 deposit since December 4, 2012.

Monetary Order – This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid November 2015 Rent	\$1,330.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,380.00
LESS: Security Deposit \$650.00 + Interest 0.00	<u>-650.00</u>
Offset amount due to the Landlords	<u>\$ 730.00</u>

The Landlords have been issued a Monetary Order in the amount of **\$730.00**. This order must be served upon the Tenant and may be enforced through Small Claims Court.

Conclusion

The Respondents B.L. and J.W. were found to be Occupants, not Tenants, and the style of cause on the Monetary Order was amended to remove their names. The Landlords were successful with their application against G.M. and were granted a Monetary Award in the amount of \$1,380.00 which was offset against the Tenant's \$650.00 security deposit leaving a balance owed to the Landlords of **\$730.00**.

This decision is final, legally binding, and 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 01, 2016

Residential Tenancy Branch

