Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing concerns an application by the landlords for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Landlord "GT" and tenant "RY" attended and gave affirmed testimony.

Landlord "GT" testified that the application for dispute resolution and the notice of hearing (the "hearing package") was served on both tenants by way of registered mail. Tenant "RY" testified that the address used for service was correct, and that hearing packages for both tenants were received at the Post Office for pick up. However, the tenant testified that as he concluded the packages were likely identical, he picked up the package addressed to him, while the package addressed to tenant "BLW" was left at the Post Office to be returned to the landlords.

Issue(s) to be Decided

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is in evidence, the fixed term of tenancy is from March 01, 2015 to February 28, 2016. Monthly rent of $1,095.00 is due and payable in advance on the first day of each month, and a security deposit of $550.00 was collected.

Documentary evidence before me also includes a copy of the "Form K – Notice of Tenant's Responsibilities." The "Form K," which is signed by the landlord and the tenant, instructs the parties variously that "a tenant in a strata corporation must comply with the bylaws and rules of the strata corporation that are in force from time to time," and that if the tenant or if persons visiting the tenant "contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines,…."

By letter dated April 23, 2015, through the property management firm, strata council informed the landlords, in part:

> Numerous reports have been received regarding a growing concern about the tenants that currently occupy [the subject unit]. There is a constant flow of "visitors" to and from the building during all hours of the day and night, some people do not know what unit [they] are visiting upon arrival and wander the hallways.
>
> ---
>
> ….there is a concern that the tenants are selling sex and or drugs from this unit which is against the bylaws that govern [the subject strata property]. The constant ongoing concerns are a disturbance to owners and residents. It is interfering with the use and enjoyment of others and their strata lots. The following bylaws are being violated and further reports will result in the application of fines against your strata lot for each reported occurrence.

The bylaw cited in the above letter is **Use of Property**, with specific reference to section / subsections 13(1)(a)(b)(c)(d)(e).

By letter dated July 09, 2015, through the property management firm, strata council informed the landlords of a bylaw infraction arising from "white towels and other laundry" seen to be "hung on your deck railings." The bylaw cited in this letter is again **Use of Property**, with specific reference to section / subsection 3(3). In this letter, the landlords are also informed that "Further reports of this infraction will result in the application of fines against your strata lot." Later, by letter dated July 23, 2015, the landlords were informed that a $50.00 fine was being assessed as a result of "3 separate occasions since the warning letter sent on July 9th, 2015" when "items have been hung on the deck railings at [the subject unit]."

By letter dated July 21, 2015, through the property management firm, strata council informed the landlords of continued concerns related to "suspected illegal activity" at the subject unit since the previous letter addressing this matter by date of April 23, 2015. In this letter, strata council also informed the landlords that the RCMP and the local government authority "have been contacted regarding these concerns and will be investigating the reports further." Additionally, in this letter the landlords are advised as follows:

> Your immediate assistance, as the owner of the suite, to rectify the concerns would be appreciated.
>
> Your immediate attention is required in these matters.

By letter dated July 23, 2015, by way of the property management firm, strata council informed the landlords of "the strong smell of cigarette smoke emanating from [the subject unit] which is causing a nuisance and interfering with the use and enjoyment of other strata lots." In this letter the landlords were further instructed, in part:

> Please be advised that this is an official warning regarding the matter and further reports received will result in the application of fines against your unit.

Again, the bylaw cited in this letter is **13. Use of Property**, with specific reference to sections / subsections 13(1)(a)(b)(c)(d)(e) and 13(3)(d).

By letter dated October 05, 2015, through the property management firm, strata council informed the landlords that according to the RCMP, the tenant "does not reside in [the subject unit]," and that "complaints linking the named tenants, and license plates of guests coming and going from the units have been linked to illegal activities such as solicitation and prostitution." Additionally, in this letter, the landlords are instructed, in part as follows:

> A fine in the amount of $100.00 will be applied every 7 days from the date that the second warning letter was sent to you which was July 22nd, 2015. Furthermore, legal costs paid out by Strata Corporation regarding the matter have been charged back to your unit.

Following from the above letter, a total of 9 separate $100.00 fines were retroactively assessed against the landlords on the following dates: July 22, 29; August 05, 12, 19, 26; and September 02, 09, 16, 2015.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlords issued a 1 month notice to end tenancy dated September 21, 2015. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is October 31, 2015, and reasons identified in support of 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

- put the landlord's property at significant risk

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

- 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 notice, and for reasons which remain unclear, on September 30, 2015 the parties proceeded to sign a "mutual agreement to end a tenancy" form. Pursuant to the mutual agreement to end a tenancy, the tenants agreed to vacate the unit on October 31, 2015, which is the same date shown on the 1 month notice by when the tenants must vacate the unit. Thereafter, the tenants vacated the unit on October 15, 2015, and returned unit keys to the landlords on October 16, 2015. The landlord testified that new renters took possession on December 01, 2015.

It is not entirely clear how they became aware, but the landlords were aware of the tenants' forwarding address. The tenant claims that his forwarding address at all times remained his "original premises," which he also claims were being renovated during the time he rented the subject unit. In any event, where it concerns the repayment of the security deposit, by letter dated November 11, 2015, tenant "RY" informed the landlords, in part:

> [Tenant "RY"] agree that [the landlords may] hold my damage / security deposit of $555.00 until full accounting and resolution has been accomplished.

While tenant "RY" claims that a key deposit of $150.00 is still held in trust by the landlords, the landlord disputes this and the written tenancy agreement reflects no record of such a deposit having been collected.

A copy of Minutes arising from strata council's meeting of November 04, 2015, documents under the hearing CORRESPONDENCE:

Email correspondence was received from the owner of the unit where the illegal activity was taking place confirming that the tenant had been provided an eviction notice and that they have vacated the unit.

By letter to the landlords dated January 19, 2016, through the property management firm, strata council acknowledged the landlord's attendance to the strata council meeting of January 13, 2016, and informed the landlords of strata council's decision "not to reverse any of the fines or legal fees charged to the strata lot for the illegal activity that was taking place."

The landlords filed an application for dispute resolution on January 29, 2016.

Analysis

Based on the documentary evidence and testimony, the various aspects of the landlords' claim and my related findings are set out below.

$50.00: *fine assessed by strata council concerning items hung on unit deck railings*

I find that a written warning was provided by strata council prior to the time when this fine was assessed. In the result, I find that the landlords have established entitlement to recovery of the full amount claimed.

$900.00: *(9 x $100.00) miscellaneous fines assessed by strata council*

I note that in the letter from the property management firm dated April 23, 2015, the landlords are informed that "further reports will result in the application of fines against your strata lot for each reported occurrence." Subsequent to that, I find insufficient evidence of 9 separate "reported" occurrences prior to the time when, by letter dated October 05, 2015, the landlords were informed of the assessment of 9 fines "every 7 days from the date that the second warning letter was sent to you which was July 22nd, 2015." I find the retroactive assessment of fines which is tied methodically to the passage of 7 day periods, rather than to 9 specific apparently reported breaches of the bylaw, to be arbitrary and therefore inconsistent with principles of administrative fairness. Accordingly, I am unable to conclude that the amount claimed is fairly borne by the tenants pursuant to the Act, and this aspect of the application must therefore be dismissed.

$1,095.00: *unpaid rent / loss of rental income for November 2015*

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Pursuant to the written tenancy agreement I find that the tenants were responsible for paying rent for each month of 12 month fixed term of tenancy from March 01, 2015 to February 28, 2016. However, in the circumstances of this dispute, the tenancy ended effective October 31, 2015 pursuant to the landlords' issuance of a 1 month notice, and pursuant to the mutual agreement to end a tenancy document signed by the parties. I am satisfied that the landlords undertook to mitigate the loss of rental income after October 31, 2015 by advertising for new renters in a timely fashion, which ultimately led to re-renting of the unit effective December 01, 2015. Following from all of the foregoing, I find that the landlords have established entitlement to the full amount claimed.

$408.70: *legal fees assessed by strata*
$23.33: *cost of registered mail*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, these particular aspects of the landlords' application are hereby dismissed.

$100.00: *filing fee*

As the landlords have achieved a measure of success with the principal aspects of their application, I find that they have also established entitlement to recovery of the filing fee.

Sub-total: $1,245.00

I order that the landlords retain the security deposit of **$550.00**, and I grant the landlords a **monetary order** for the balance owed of **$695.00** ($1,245.00 - $550.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **$695.00**. Should it be necessary, this order may be served on the tenants, 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*.

Dated: March 29, 2016

Residential Tenancy Branch