



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
AS CNR DRI MNDC MNSD OLC RR FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on the Tenant's application are sufficiently related to the main issue relating to the Notice to end tenancy and the payment or non-payment of rent and utilities as applied for on the Landlords' application. Therefore, I will deal with the Tenant's requests to set aside, or cancel the Landlord's Notice to End Tenancy issued for unpaid rent and utilities; I will determine if the Tenant was a tenant in common or if he was a co-tenant with the other tenant; and I dismiss the balance of the Tenant's application with leave to re-apply.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by the female Landlord and the Tenant. The Landlord's application listed only the female Landlord and the Tenant's application listed both the male and female Landlords as respondents. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise, and the style of caused will list both Landlords, pursuant to section 64(3)(c) of the Act.

The Landlord filed her application on May 12, 2016, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of 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 Tenant filed on May 10, 2016 seeking an Order to cancel the notice to end tenancy for unpaid rent; orders to determine the type of tenant he was; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by both Landlords and the Tenant. 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.

Each person confirmed receipt of the application for Dispute Resolution, hearing documents and evidence served by the other. Notwithstanding the male Landlord's submission that he did not recall receiving the Tenant's application prior to receiving the Tenant's application, both parties confirmed receipt of the documents served by the other party.

A review of the evidence was conducted with both parties during random page checks. Both parties provided affirmed testimony that they served the other party copies of the same documents that were served upon the Residential Tenancy Branch (RTB). As such, I considered the relevant submissions from each party as evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Was the Tenant a co-tenant or tenant in common?
2. Should the 10 Day Notice to end tenancy issued May 3, 2016 be upheld or cancelled?
3. If upheld, have the Landlords proven entitlement to an Order of Possession and a Monetary Order for unpaid rent and utilities?

Background and Evidence

The rental unit was described as being a 2 bedroom apartment located in a two level apartment building that had six separate apartments.

It was undisputed that the Landlords initially rented the apartment to two male co-tenants, Tony and Travis in March 2014. Those tenants paid a security deposit of \$675.00 and their rent was \$1,350.00 payable on the first of each month. Tony vacated the rental unit and the Landlords agreed that the current Tenant, B.H., could move into the rental unit as of October 1, 2014.

Then Travis vacated the rental unit on approximately March 15, 2015 and was replaced with another tenant named Dorian on March 29, 2015. Dorian moved out sometime in April 2016 leaving B.H. residing in the rental unit as the last remaining Tenant.

B.H. testified he paid his security deposit of \$337.50 to Tony when he moved into the unit October 1, 2014. The Landlords testified they had the understanding that B.H. would pay the security deposit to Tony because Tony was moving out and needed his deposit returned. The Landlords confirmed they are still in possession of the full \$675.00 security deposit that was paid at the onset of the initial tenancy agreement.

On March 29, 2015 the two Tenants, B.H. and Dorian both signed the "ADDENDUM TO RESIDENTIAL TENANCY AGREEMENT CONDITIONS OF TNEANCY", as submitted into evidence. The Tenant confirmed he and Dorian signed this agreement in March 2015 when Dorian moved into the rental unit.

On September 14, 2015, the two Tenants, B.H. and Dorian, and both Landlords signed the "Rent Adjustment / Revised Rental Terms" agreement; as submitted into evidence. Each party confirmed their signature on the aforementioned document which stated rent would be \$1750 each month effective December 2015. That agreement also stipulated the Tenants would be required to pay electricity and hot water in addition to the rent.

The Landlords testified rent as per the September 14, 2015 was paid in full up to and including April 2016 rent. When May 1, 2016 rent of \$1,750.0 and the \$51.39 utilities, were not paid the Landlords posted a 10 Day Notice to the Tenant's door on May 1, 2016. The Landlords submitted that copies of the utility bill were served to the Tenant in April 2016.

The Tenant asserted he was coerced into signing the Rent Adjustment / Revised Rental Terms agreement. He stated he was going to be evicted if he did not agree to the new terms. He confirmed they paid the rent in accordance with that agreement from October 2015 to April 2016.

The Tenant testified Dorian vacated the rental unit sometime in April 2016 and later changed his submission to say Dorian moved out on May 4, 2016. The Tenant asserted that he was of the opinion that he entered into a written agreement that his rent would be \$675.00 for his bedroom and that he was not responsible for the rent for the entire rental unit. The Tenant stated he was never given a copy of his first tenancy agreement that he signed when he moved into the unit.

The Tenant confirmed that he did not pay rent for May or June 2016 and did not pay for the utilities. He confirmed receipt of the utility bill that was given to him in April 2016. The Tenant confirmed he is still residing inside the rental unit. When asked why he thought he had the authority to continue to occupy the rental unit and not pay rent the Tenant stated he attempted to pay his "portion" of the rent and the Landlord refused saying he owed the full amount of rent. He later changed that statement to say he was waiting until the outcome of this hearing to determine how much he had to pay.

The Landlords asserted they do not rent rooms like a rooming house. They argued all of their apartments are rented for the full monthly rent and they do not rent individual

rooms. They asserted they have not been paid the rent or the utilities, even after they served the Tenant with the utility bill, as indicated on the 10 Day Notice

Prior to concluding the hearing the Tenant requested his copy of the Decision be sent to the rental unit address.

Analysis

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

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 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.
- 7(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.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Residential Tenancy Policy Guideline 13 provides co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. 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.

I concur with the aforementioned policy and I find that it applies to the matter currently before me, pursuant to section 62 of the *Act*.

Notwithstanding the Tenant's assertion that he had a separate tenancy agreement which he entered into on or before October 1, 2014, I find the "Revised Rental Terms" document which was signed on September 14, 2015 and the "Addendum to Residential Tenancy Agreement" would supersede any previously written tenancy agreement, if one existed, pursuant to sections 14 and 62 of the *Act*.

In addition to the above, I further find the "Revised Rental Terms" and the "Addendum to Residential Tenancy Agreement" are evidence B.H. and Dorian were co-tenants and jointly and severally liable for any debts or damages relating to the tenancy, pursuant to Policy Guideline 13 and section 62 of the *Act*. As such, the Landlords have the authority to recover the full unpaid rent from one of the co-tenants as they have done in this case.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on May 6, 2016, and then filed an application to dispute that Notice on May 10, 2016. The effective date of the 10 Day Notice was **May 16, 2016**.

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

I accept the undisputed evidence that the Tenant continues to occupy the rental unit and has not paid rent for May or June 2016. Based on the totality of the evidence before me I find the Tenant has breached sections 7 and 26 of the *Act* by failing to pay rent for May and June 2016 and failing to pay the \$51.39 for utilities. Accordingly, I uphold the 10 Day Notice issued May 3, 2016 and I dismiss the Tenant's application to dispute the Notice.

Based on the above, I find the Landlords submitted sufficient evidence to uphold their application for an Order of Possession. The Landlords have been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

It was undisputed the parties entered into the written "Revised Rental Terms" document on September 14, 2015. I do not accept the Tenant's assertion that he was coerced into signing that agreement or that it was an illegal rent increase. If that was the case the Tenant ought to have mitigated his loss by seeking a remedy regarding that agreement back in September 2015 when it was first signed, pursuant to section 7 of the *Act*. Rather, I conclude the parties mutually agreed to amend the tenancy agreement to

increase the rent to \$1,750.00 per month plus the cost of utilities and they all signed the document confirming that agreement.

Based on the above, I find sufficient evidence to prove the Tenant did not pay the \$1,750.00 rent for May 2016 and did not pay the \$51.39 for utilities in breach of the amended terms of the tenancy agreement and sections 7 and 26 of the *Act*. Accordingly, I grant the Landlords' application for May 1, 2016 unpaid rent in the amount of **\$1,750.00** plus **\$51.39** for utilities, pursuant to section 67 of the *Act*.

As noted above, this tenancy ended **May 16, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlords are seeking money for use and occupancy and/or loss of rent for June 2016, not rent. I approve the Landlords' request for compensation for June 2016 after considering the following: (1) the delay from when they filed their application on May 12, 2016 and the scheduled hearing date of June 14, 2016; (2) the fact that the Tenant continues to occupy the rental unit without payment; and (3) the Landlords will not regain possession of the unit until after service of the Order of Possession and will have to ready the unit and find a new tenant. Accordingly, I grant the Landlords' application for use and occupancy and loss of rent for the entire month of June 2016 in the amount of **\$1,750.00**, pursuant to section 67 of the *Act*.

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 Tenant was not successful with his application; therefore, I declined to award recovery of his filing fee.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$675.00 deposit since March 2014.

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

Unpaid May 2016 Rent	\$1,750.00
Unpaid Utilities that were due May 1, 2016	51.39
Use and Occupancy & Loss of Rent for June 2016	1,750.00
Filing Fee awarded to Landlord	<u>100.00</u>
SUBTOTAL	\$3,651.39
LESS: Security Deposit \$675.00 + Interest 0.00	<u>-675.00</u>
Offset amount due to the Landlords	<u>\$2,976.39</u>

The Tenant is hereby ordered to pay the Landlords the offset amount of **\$2,976.39** forthwith.

In the event the Tenant does not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$2,976.39** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlords were successful with their application and were awarded an Order of Possession and a monetary award of \$3,651.39. That monetary award was offset against the \$675.00 security deposit leaving a balance owed to the Landlords of \$2,976.39.

The Tenant's application to dispute the 10 Day Notice and recover his filing fee was dismissed, without leave to reapply. The balance of the Tenant's application was dismissed, with leave to re-apply.

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: June 14, 2016

Residential Tenancy Branch