Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, OPB, MNR, MNDC, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders. The landlords also sought an order of possession.

The hearing was conducted via teleconference and was attended by the landlords and the tenant.

At the outset of the hearing the landlords confirmed the tenant is no longer in possession of the rental unit and as such they no longer need an order of possession. I amend the landlord's Application to exclude the matter of possession.

The landlords also noted that wished to reduce their monetary claim from $3,625.00 to $1,400.00. As this was a reduction in the amount of their original claim I find there is no prejudice to the tenant in this amendment and I accept it.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

Both parties submitted copies of a tenancy agreement signed by them on August 13, 2015 for a 6 month fixed term tenancy beginning on October 1, 2015 for a monthly rent of $1,400.00 due on the 1st of each month with a security deposit of $700.00 paid.

The parties also submitted copies of a "Childcare Agreement" arranging for the tenant to act as the landlord's childcare provider. The agreement stipulated the landlords would pay the tenant $600.00 per month and that payment will be effected by reducing the amount of rent to be paid each month. The agreement required a 1 month notice to terminate the Childcare Agreement.

The landlords submit that the tenant spoke with them in December 2015 and stated that she intended to move out of the rental unit but that the tenant did not give a written notice until December 24, 2016.

The tenant stated that the landlords approached her in early December 2015 and wanted to end the Childcare Agreement. She stated that they wanted her to pay the full amount of $1,400.00 for rent for the month of December 2015. She stated she could not do so and she would move out. She stated she provided them with a written notice on December 24, 2016 by email (a copy was submitted into evidence).

The email reads, in part: "Please accept this as official 30 day notice that I wish to terminate the tenancy and childcare agreements as of today (December 24, 2015)." I asked the tenant to clarify her meaning in this sentence. The tenant stipulated that she intended for the tenancy to end on December 24, 2015 and she was not sure why she stated "30 day notice"

The tenant submitted that she had originally agreed to pay rent for the month of January 2016 if she could not find someone to take over her agreement. The tenant stated that she had provided the landlord with two applications plus some additional names to pursue as tenants.

During the hearing I noted that the applications put forward by the tenant did not indicate when they wanted the unit for. The tenant stated they wanted it for January 1, 2016 and that she had some text messages on her old phone confirming that but she did not provide them as evidence.

The landlord submitted that they took the tenant's 30 day notice to mean that she was planning to move out for February 1, 2016. They also stated that both of the potential tenants identified were considered but the one wanted it for February 1, 2016 and the other (the company) decided they didn't want it.

The tenant testified that she had moved out her belongings on December 28, 2015 and that she went back to the unit on January 3, 2016 to clean the unit. She stated that when she returned it was clear someone had entered the unit and removed some of her belongings that she had forgotten. The tenant stated she returned the keys to the unit on January 3, 2016.

She states she then contacted police and the RTB and that an Information Officer told her that if she was not living in the rental unit she did not have to pay rent. So she cancelled the rent cheque for January 2016.

The tenant stated that she provided her forwarding address to the landlord by email on January 8, 2016. I note the landlord submitted their Application on January 21, 2016 or 13 days after receipt of the forwarding address.

The landlord submitted that they advertised on all available local internet sites and in late January 2016 were able to secure a new tenancy beginning on February 1, 2016

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

While the parties may have had a disagreement over the Childcare Agreement I find that any term in that agreement is completely unrelated to the tenancy agreement. As such, I find there is no evidence before me that the landlord had breach any term of the tenancy agreement let alone a material term.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent. Allowable reasons under the Act include: an overpayment of a security deposit; an overpayment of a rent increase; as directed by an Arbitrator; and after completing emergency repairs under strict requirements.

As such, I find the earliest the tenant could have ended the tenancy, in accordance with Section 45(2) was March 31, 2016 as such the tenant would normally remain responsible for the payment of rent until the end of the fixed term or March 31, 2016. However, as the landlords were able to secure new tenants for February 1, 2016 I find the tenant's obligation is reduced to the month of January 2016, subject to the landlord's obligation to mitigate any losses. I also find the tenant had not authourity pursuant to Section 26 of the *Act* to withhold any amount of rent.

I find the landlords took reasonable steps to mitigate their losses. I find that while the tenant may have provided names and/or applications to the landlord for potential tenants the landlord has the right to reject a potential tenant for any reason they see fit. I am satisfied the landlord gave sufficient consideration of the tenant applications put forward by the tenant.

As such, I find the landlords are entitled to receive rent for the month of January, 2016.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates

that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

While the tenant vacated the rental unit on January 3, 2016 and provided the landlord with her forwarding address by email on January 8, 2016, I find the landlord had until January 22, 2016 to file their Application for Dispute Resolution claiming against the deposit. As the landlord submitted their Application on January 21, 2016, I find the landlord has complied with Section 38(1) and the tenant is not entitled to double the amount of the deposit.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$1,500.00** comprised of $1,400.00 rent owed and the $100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of $700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$800.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord 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: September 12, 2016

Residential Tenancy Branch