



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords; both tenants and the tenants' agent.

At the outset of the hearing I advised the landlords that their evidence submitted to the Residential Tenancy Branch did not include the full tenancy agreement between the parties. I noted that we had received only every second page of that agreement. We reviewed the other evidence; it appears that all other evidence was complete.

At the outset of the hearing the SK identified himself as the tenants' advocate. However, Residential Tenancy Policy Guideline #26 defines an advocate as a person who advises a landlord or tenant; attends a hearing with them and assists that party in presenting his or her case. The Guideline goes on to say:

"An advocate who assists a party to present his or her case at a hearing typically does so by:

- Giving opening remarks and making legal arguments and submissions on behalf of the party such as presenting the facts and evidence of the case clearly and conveying how the facts and evidence relate to the Legislation.
- Guiding the party through his or her evidence. This may be done through asking questions of the party and assisting the party to present his or her oral evidence and explain his or her documentary evidence.
- Asking questions of the party's witnesses for the purpose of presenting evidence.
- Asking questions of the other party and their witnesses with respect to their evidence.

Guideline #26 states that an agent acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may:

- Apply for dispute resolution on behalf of the landlord or tenant.
- Prepare, organize, serve and submit evidence.
- Make submissions on behalf of the party.
- Ask questions of the other party and witnesses with respect to their evidence.
- Settle claims.

With the exception of responses to two specific questions I posed to the male tenant SK made all submissions and presented all evidence submitted by the tenants. As such, I find SK acted as an agent and not an advocate.

At the outset of the hearing the tenants' agent submitted that the parties were no longer in a landlord/tenant relationship and that the tenants were no longer tenants. I advised that the claim is based on the landlord/tenant relationship between the parties that existed at all material times of the claim.

While I did not state this in the hearing I now note that Section 60(1) of the *Act* states that if the *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. Section 1 of the *Act* also defines a tenant as including, when the context requires, a former tenant. As such, I find the parties are, for the purposes of this proceeding and decision landlords and tenants.

Prior to the tenants' response to the landlords' claim I advised the tenants that despite their submission of a Monetary Order Worksheet in which they identify that they believe they have a \$20,000.00 claim against the landlords for a promise of assistance with a down payment on a townhouse, I would not consider their entitlement to such a claim and that they were at liberty to file a separate Application for Dispute Resolution if they sought compensation from the landlords.

The tenants' agent pointed out that the Monetary Order Worksheet allows for a respondent to submit it in support of their position. I acknowledged that while I would consider the tenants' documentary evidence and the oral submissions provided, primarily, by their agent that the Monetary Order Worksheet would provide little, if any, evidentiary value to the proceedings.

I also note that while both tenants attended the hearing their agent originally resisted my request to have the male tenant, who had first-hand knowledge of his own interaction with the landlords, provide a response to two specific questions. In fact, the agent's response when I originally asked the questions of him was that "who can tell, I wasn't there at the time."

Since one of the tenants "was there at the time", I asked for the tenant who was to be made available to respond. The agent suggested that he was representing their needs and was not prepared to have them respond. I ordered the agent to allow the male tenant to respond and the male tenant answered my questions.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed that tenants originally moved into the rental unit on August 1, 2011 for a monthly rent, by the end of the tenancy, of \$2,300.00 due on the 1st of each month with a security deposit of \$1,150.00 and a pet damage deposit of \$200.00 paid. The tenancy ended on August 1, 2016, pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The landlords submit that in late May 2016 the female landlord's father passed away and they had to attend his funeral on May 29, 2016. The female landlord testified that as a result she had completely forgotten to cash the tenants rent cheque for the month of June 2016.

The landlords wrote on their Application for Dispute Resolution Details of Dispute section that "final rent cheque owed for June 2016 was misplaced and not located until August 2016."

The female landlord testified that they then contacted the tenants on August 23, 2016 to advise them they were going to deposit the cheque but that tenants asked for the landlord to wait until September 1, 2016 to cash it.

The landlord submitted that on August 30, 2016 the tenants advised them that they had put a stopped payment on the cheque and offered to repay the landlords at a rate of \$100.00 per month until paid off. The landlords testified that this was unacceptable to them to wait 23 months to have the full rent paid when it was owed to them for June 2016. The parties agreed that the tenants had sent the landlords two separate e-transfers of \$100.00 each but that the landlords had rejected them both.

The landlords submitted into evidence an email written by the tenants' agent dated August 23, 2016 that states:

"I was very upset to hear from D and S that you had contacted them about not cashing their June rent payment and that you now want to do that. I realize now that you didn't mean to give them the extra months rent and that it was just your oversight. Unfortunately they had assumed you were being gracious with them for the disruption in their lives.

In confidence I must tell you that they have suffered much as a result of losing their home and the cost of moving and storage and still have no place to go. Although this is not at all your problem I want to suggest to you that re connect with them and perhaps offer the June rent as a gift to their ministry. They are in a financial crunch at the moment and desperately need help. The news of this \$2,300.00 cost has hit very very hard and they are devastated.

I appeal to your kindness to consider their plight."

The landlords seek compensation for rent for the month of June 2016 in the amount of \$2,300.00,

The landlords also submit that since the end of the tenancy they have received bills from the local city government for water usage and seek compensation for the total amount of \$302.05.

In support of this claim the landlords have submitted two bills. The first bill is dated April 29, 2016 in the amount of \$143.24. The second bill is dated August 5, 2016 in the amount of \$233.35 however; as the tenancy ended on August 1, 2016 the landlords reduced the tenant's portion of the bill to \$158.81.

The tenants or their agent provided no testimony in response to the landlords' claim for utilities in the amount of \$302.05. I also note that none of the tenants' documentary evidence provided any response to this portion of the landlords' claim.

The tenants' agent submitted that prior to the end of the tenancy the landlords had used a number of questionable tactics to threaten the tenants with ending the tenancy or increasing the rent by amounts in excess of the annual increases allowed under the *Act*.

The tenants' agent stated that, in addition, the landlord made promises to the tenants of an increased amount of compensation for ending the tenancy if they sold the property prior to the end of the term so that the tenants could put towards a down payment for the purchase of a townhouse. The tenants submit the value of that promise is approximately \$20,000.00.

In support of their position the tenants submitted emails between the female landlord and the mail tenant. In the first email dated March 8, 2016 from the landlord to the tenant the landlord provides the following information:

- They intend to sell the residential property;
- If they don't sell the property they will continue renting it out but they must increase the rent by \$300.00 per month;
- If the landlords are able to sell the property and the new owners would like possession earlier than the end of the fixed term (July 31, 2016) the landlord offers that they will provide additional compensation in an amount equivalent to 1 month's rent for each month earlier than the end of the fixed term.

In the email the landlord wrote:

"If the hypothetical people moved in August 1, 2016, we'd technically owe you 1 month of rent (\$2,300). This amount we do not feel is the right thing to do as you guys have been so loyal and I truly believe in being good to others if you want good things to happen to you. I can't give you an exact figure until I know how much it sells for, but I can promise you that it will not be \$2,300.00 and that I'd like to give you something so you could use it as a down payment on a townhouse in the area- or whatever you want to spend it on."

On March 9, 2016 the tenants responded outlining that:

- They intended to enforce the end date of the fixed term tenancy unless it was negotiated mutually between the parties;
- Asked for compensation in the amount of \$900.00 if the occupants living in another part of the residential property and renting the space from the tenants decided to move out prior to the end day of the tenants' tenancy as a result of the landlords' need to end the tenancy.

The tenants also wrote: "Your offer of financial help is very generous and kind.

In response, the landlord wrote that she would not compensate the tenants if the occupant from other unit were to vacate earlier than required. She also wrote: "I feel that you are really missing the big opportunity that I am presenting you with. This is money out of my own pocket that I do not have to give or even offer."

The tenants submit that when the landlords did not cash the cheque for rent for the month of June 2016 they believed that this was the landlords' quiet way of giving them the additional compensation they had discussed and didn't think anything else of it. Despite this the parties confirmed that the tenants never once thanked the landlords for not cashing the rent cheque or granting it to them as a form of compensation.

The male tenant confirmed that when the landlords contacted him in August 2016 and asked if it was ok to cash the June cheque he did not raise their thought that it was for compensation. He also stated that even though he believed that this was part of the compensation promised he offered and attempted, on two occasions, to provide the landlord with \$100.00 payments because he didn't want to cause any trouble.

The tenant confirmed that they had nothing in writing from the landlords agreeing that the tenants did not have to pay rent for the month of June 2016.

The tenants' agent also submitted that because the landlords did not pursue the payment of rent when it became due they should not be able to pursue it nearly a month after the tenancy ended. The agent submitted that the landlords' failure to practice due diligence prevents them from collecting rent after the tenancy ended.

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.

In regard to the landlords' claim for the utility costs, I find that in the absence of any testimony or evidence from the tenants disputing either the fact that the tenants were responsible for the payment of any utilities during the tenancy or the amounts claimed by the landlords, the landlords are entitled to the full amount of \$302.05 claimed.

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.

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);

- iv. Section 48 (landlord's notice: end of employment);
- v. Section 49 (landlord's notice: landlord's use of property);
- vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
- vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

One of the primary obligations of a tenant during a tenancy is to pay the rent to the landlord for every month in the tenancy in accordance with Section 26 as note above. The *Act* does allow certain circumstances where the tenants may withhold rent, such as an overpayment of a security deposit; compensation for the costs of emergency repairs incurred by the tenant (after specific requirements are met) or as ordered by an arbitrator.

Nothing in the *Act* prohibits the parties from entering into an agreement that allows the tenants withhold any or all rent. However, there is no evidence before me that the parties entered into any such agreement, either written or verbal, that would allow the tenants to withhold rent for the month of June 2016 for any purpose whatsoever.

While I accept that, in the case before me, the tenants did not initially withhold any amount of rent rather it was the landlords' failure to cash the rent cheque for the month of June 2016 that resulted in the circumstances that have led to this claim, as noted above parties to a tenancy have up to 2 years from the end of the tenancy to claim any amounts they feel are owed to them as a result of the tenancy.

As such, I find the landlords are not prohibited from seeking a rent payment for the month of June 2016 and as a result I find the tenants owe the landlords rent for that month in the amount of \$2,300.00.

I make this finding in absence of making any determination on whether or not the parties had entered into a separate agreement for the landlord to provide the tenants with additional monies to assist in the purchase of a townhouse. Even if the parties agreed to such compensation there has been no evidence or testimony presented to me that the parties agreed that the tenants did not have to pay rent for the month of June 2016 as part of that compensation.

I also find the submissions from the tenants alleging the landlords' questionable tactics regarding the discussions about ending the tenancy and their plans to either sell the property or continue renting at a much higher rental rate are not relevant to the obligations of whether or not rent is owed to the landlords.

I also find that the tenants' position that they considered June 2016 rent as part of the compensation agreement they may have had is inconsistent with the continued offer, by the tenants, to pay \$100.00 per month until \$2,300.00 was paid off and the statements made in tenants' agent's email to the landlord of August 23, 2016.

Conclusion

Based on the above, find the landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,702.05** comprised of \$2,300.00 rent owed; \$302.05 utilities owed and the \$100.00 fee paid by the landlords for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords 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: March 24, 2017

Residential Tenancy Branch