Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the "Act") to deal with cross-applications based on a 1 Month Notice to End Tenancy for Cause dated May 22, 2017 (the "1 Month Notice").

The landlord applied for an order of possession, a monetary order for unpaid rent, compensation for loss or damage, authorization to retain the security deposit, and recovery of the application filing fee.

The tenants applied for an order cancelling the 1 Month Notice and for more time in which to do so. The tenants also applied for orders requiring the landlord to make repairs and to comply with the Act and for orders suspending or setting limits on the landlord's right to enter the rental unit, allowing the tenants access, and for recovery of the application filing fee.

An agent for the landlord (KO) and the building manager (AT) attended on behalf of the landlord. One of the named tenants (AS) attended on her own behalf and GS attended as agent for DM, whom she described as her adopted son. Both parties were given a full opportunity to be heard, to present documentary evidence and to make submissions.

At the outset of the hearing the landlord withdrew its request for an order of possession as the rental unit was no longer occupied by the tenants. Also at the outset of the hearing, the landlord's agents advised that they had discarded the contents of the rental unit immediately after the tenancy ended. After learning of this, the tenants agreed that the majority of the relief sought in their application was no longer relevant, and indicated that they would be applying for compensation for the loss of the contents of the suite by separate application.

Service of the parties' respective applications and notices of hearing was not at issue.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to retain the security deposit?

Is either party entitled to recover their application filing fee?

Background and Evidence

According to the written tenancy agreement in evidence and the agreed upon facts, this tenancy began on January 1, 2014 as a fixed term tenancy, and converted to month to month tenancy after the expiry of one year. Rent was payable on the first day of each month. A security deposit of $645.00 was paid at the beginning of the tenancy and remains with the landlord. The tenancy agreement allows for assignment and subletting with the landlord's written consent. It also allows the landlord to collect $25.00 for late payment and $25.00 for nsf fees.

It was agreed that AD and DM were originally co-tenants. Both have signed the tenancy agreement.

AD testified that she and DM separated in early 2016 and that she moved out and took her name off the rental agreement at that time. She submitted emails between herself and the landlord about this, including one dated January 20, 2016 attaching a form called "Assignment of Security Deposit" sent to her by the landlord. In addition to providing for the assignment of the security deposit, that form also provides for the removal of a name from a tenancy agreement. AD says that she requested this form, completed it, and returned it to the landlord around the time that she and DM separated. Also in evidence from the tenants is email correspondence from AD to GS describing AD's difficulty contacting the building manager when she vacated the rental unit.

The landlord says that it does not have a completed form from AD, and that AD is therefore still liable under the terms of the lease.

The landlord's evidence included a letter from the landlord dated December 2, 2015 to AD and DM stating, among other things, that there are two other individuals housed in the suite, and that the landlord had not consented to a sublet, with the result that the occupants were required to leave.

The landlord served the tenants with a 1 Month Notice on May 22, 2017 by posting it on the rental unit door. It had an effective date of June 30, 2017. The landlord says that the 1 Month Notice was not disputed, and that it took possession of the rental unit June 30, 2017 as a result.

The landlord seeks rental arrears in the amount of $1,319.00 as well as $40.00 for parking, and $25.00 for June's late fee. A leger was submitted in support of these claims.

The landlord also claims for cleaning and repair and garbage removal at the end of the tenancy. The building manager testified that the unit was unclean and cluttered with garbage when she entered and that it had been newly renovated when the tenancy began.

The building manager stated that she considered that the unit had been abandoned because it there was no clothing in the closets and no bedding on the mattresses. She conducted a condition inspection report without the tenants on this basis.

Photographs were provided of the contents of the rental unit. These included photos of a new looking mattress, a box spring without a mattress, garbage, older looking table and chairs, and a couch that had been on the balcony.

The landlord claims $200.00 for garbage removal and $134.00 in cleanings costs. Receipts were provided. The garbage removal receipt indicates removal of "table/garb bags/recycling/scrap metal & paint." There is no indication that the box spring, the complete bed, or the couch, were discarded through this removal service.

The landlord also seeks $184.72 for the replacement of a door. GS conceded that the tenant was responsible for the damage to the door.

The landlord also claims $722.09 for the replacement of blinds. A receipt in this amount was in evidence, although it does not detail the price per blind or set out how many blinds were missing, damaged, or replaced. The landlord asserted that most of the blinds in the unit were broken or missing. However, the condition inspection report does not set this out in any detail. Missing or broken blinds are not noted in any of the rooms, and only "missing blinds" is noted in section Z. Nor are there any photos of missing or broken blinds, although at least two of the photos of other things in the rental unit show apparently intact blinds. The landlord's agent seemed to suggest that more than the broken or missing blinds had to be replaced to ensure consistency of colour.

The landlord admitted that the tenants were not given a first opportunity for a condition inspection, but a Notice of Final Opportunity for inspection was posted on the rental unit door. Although the landlord takes the position that AD remains liable for unpaid rent and any damage to the rental unit, AD was not provided with any opportunity to participate in the move-out condition inspection report, clean or repair the unit, or remove anything in the unit. AD notes that the landlord had her phone number and email address, if not her mailing address.

The landlord's evidence includes a note to file from KO to AT, dated June 7, 2017, recording a conversation between KO and GS. KO records that she told GS to have her lawyer prepare some sort of statement that GS represents DM, and then GS would be given access to the suite to remove its contents and clean. The landlord's position is that because GS did not provide this documentation it could not allow her to access the suite for privacy reasons.

GS testified that DM had been required to leave on short notice for a remote location for work, and that the intention had been for DM's friend, who had been residing in the unit since February of 2016, and DM's brother to occupy the rental unit in his absence. As a result, DM left most of his belongings behind. AD confirmed that she had seen DM as he was about to leave and that he had very little with him.

In written submissions, DM stated that the manager should have allowed his long term roommate and his brother to live in the rental unit while he was away. He stated that he had notified another manager while the current manager was away on maternity leave about his roommate residing there in early 2016, and had received verbal approval, and that the roommate had been living there since. DM also said that before he left the area, he left a note on the office door stating that he was going away for work and that his brother would be taking care of the apartment.

GS submitted that in late May, AT called the police and alleged that DM's brother and the long-term roommate were trespassing because they were not on the tenancy agreement. They were alarmed at this and did not return except to collect those belongings they could easily carry. GS submits that DM should not be responsible for rent for June because his long term roommate and brother were "illegally evicted" by AT on May 21, 2017 when she called or threatened to call the police if they returned.

GS also testified that after the long term roommate and DM's brother were "scared away," she twice asked to be able to collect the contents of the rental unit, which also included costly end tables with sentimental value and a television, and to clean the unit, but that she was not permitted to do so unless she had written authorization from DM through a lawyer. She said it was difficult to secure this in a timely way in part because of DM's remote location, and because they are only able to communicate occasionally via satellite phone.

GS submitted that she had been in conversation with AT since May 1, 2017 about various matters, including the payment of rent for the suite, and that rent for at least March, April, and May of this year was paid by her husband, with whom she shares the same last name. GS submitted copies of rent cheques and the landlord's rent receipts, made out to her husband, RS.

Analysis

The tenants were served with the 1 Month Notice on May 22, 2017 when it was posted on the rental unit door. The tenants did not apply to dispute it.

Section 47(5) of the Act provides that if a tenant does not dispute a 1 Month Notice within ten days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I find that this tenancy ended on June 30, 2017, the effective date of the 1 Month Notice, because the tenants did not apply to dispute the 1 Month Notice.

Subletting is defined in Residential Tenancy Branch Policy Guideline #19 as an arrangement under which the original rental agreement remains in place, and a new agreement (or sublease) between the original tenant (here, DM) and the subtenants (DM's brother and DM's roommate) is entered. A sublease is generally temporary.
The tenancy agreement allows the tenants to sublet the rental unit, but only with the landlord's prior written consent. There was no indication that the landlord gave written consent for DM's roommate or his brother to sublet the agreement. They did not therefore have a right to be there, although it may not have been helpful to anyone for the landlord's agent to threaten them with the police.

Regardless of whether DM's brother or DM's roommate were authorized to reside in the rental unit, the tenancy between DM and the landlord remained in place. As DM did not give notice to end the tenancy, he was required to pay rent until the tenancy ended as a result of the 1 Month Notice, on June 30, 2017. I therefore accept the landlord's claim for unpaid rent, late fees, and parking.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlord seeks compensation for damage to the rental unit and for cleaning and removal. I do not award the landlord the amounts claimed for cleaning or garbage removal.

Here, the landlord has extinguished its right to claim this against the security deposit. Section 35 of the Act requires that the landlord give the tenants two opportunities to conduct a condition inspection report. Here, the landlord provided only one opportunity (the Notice of Final Opportunity, posted on the rental unit door). Based on its own position that AD remains liable although she no longer resides in the rental unit,

the landlord should also have given AD two opportunities to participate in the inspection. Section 36 states that a landlord who has breached s. 35 extinguishes its right to apply or damages to the rental unit against a security deposit.

The landlord appears to be suggesting that it did not need to offer two opportunities for condition inspection at move-out because the unit had been abandoned. I do not accept that the unit was abandoned. "Abandonment" under s. 24 of the Residential Tenancy Regulation is a defined term, and none of the definitions in that section apply: there was no indication that the tenant had expressly or implicitly suggested that he would not be returning, and in the circumstances it was not unreasonable to assume the tenant would be returning. Additionally, DM did not vacate the property after the tenancy ended, and did not remove substantially all his belongings.

Additionally, DM's mother made clear that she wanted to clean the suite and remove the contents, and was not allowed to do so. GS's husband was paying the rent, and the building manager was aware of this and had been in conversation with GS since May, 2017. AD should also have been given an opportunity to clean, repair, and/or remove the contents of the rental unit, on the landlord's own logic.

In conclusion, I accept the landlord's claim for unpaid rent but reject its claim for damages.

Additionally, I do not accept the landlord's claim against AD, as I prefer her evidence and find that she effectively removed herself from the agreement in January of 2016. The landlord's failure to include her in the events surrounding the end of this tenancy is consistent with my conclusion.

Although the landlord was partially successful in this application, I do not award the landlord the application filing fee. This is because the landlord by its conduct has removed the opportunity for the tenants to successfully apply for the relief they originally sought (including allowing access for recovery of personal belongings).

The landlord continues to hold the security deposit. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent (as opposed to damages).

Conclusion

I conclude that AD is not liable under the terms of the tenancy agreement.

I issue a monetary order against DM only in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and to retain the security deposit for this tenancy:

Item	**Amount**
Rental arrears, late fees, parking	$1,384.00
Less security deposit	-$645.00
Total Monetary Order	**$739.00**

The tenant, DM only, must be served with this order as soon as possible. Should DM fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court against DM only.

The tenants are at liberty bring a separate application for compensation for the loss of the contents of the rental suite.

Dated: September 29, 2017

Residential Tenancy Branch