



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' Application: OPR, OPC, OPB, MND, MNR, MNSD, MNDC, FF, O
Tenants' Application: CNC, FF

Introduction

This hearing was convened by way of conference call in response to separate applications made by the Landlords and the Tenants which were scheduled to be heard together in this hearing.

The Landlords applied on July 28, 2017 for an Order of Possession for cause, unpaid rent, and breach of an agreement. The Landlords also applied for a Monetary Order for: unpaid rent; damage to the rental unit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenants' security deposit; to recover the filing fee from the Tenants; and for "Other" issues. The Tenants applied on June 26, 2017 to cancel a notice to end tenancy for cause and to recover the filing fee.

All the parties appeared for the hearing and all testimony was taken under affirmation. The hearing process was explained and no questions were asked on how the proceedings would be conducted. The parties were given a full opportunity to present evidence on the issues to be decided, to make submissions, and to cross examine the other party on that evidence.

Preliminary Issues

The parties confirmed the service and exchange of each other's application and evidence which was affected prior to the hearing. At the start of the hearing, the parties confirmed that they had appeared for a hearing with a different Arbitrator four days prior to this hearing, namely on August 28, 2017. The file number pertaining to that hearing is detailed on the front page of this Decision. That hearing heard the Landlords'

application for a request to end the tenancy early. However, in that hearing the parties reached a settlement agreement to end the tenancy on September 30, 2017 at 1:00 p.m. and the Landlords were issued with an Order of Possession effective for this date and time.

As a result, I determined that as the tenancy had been ended by mutual agreement between the parties four days prior to this hearing, and the Landlords had obtained an Order of Possession through settlement, the Landlords' application for an Order of Possession was now moot. As a result, this portion of the Landlord's application was dismissed.

Accordingly, I also determined that because the Tenants agreed to end the tenancy with the Landlords in the August 28, 2017 hearing, their application to cancel the notice to end tenancy and recover the filing fee is also dismissed.

Therefore, the only matter left outstanding before me was the Landlords' monetary claim. The Landlords had filed their application to claim \$8,228.63 and had laid out their claim in a Monetary Order Worksheet dated July 18, 2017. However, in the interim time the Landlords had submitted into evidence a number of Monetary Order Worksheets, the latest one being a claim for \$11,034.93.

Despite the Landlords failing to amend their application for the increased amount sought from the Tenants in accordance with Rule 4.1 of the Residential Tenancy Branch Rules of Procedure, I determined the Landlords' claim consisted of alleged damages to the rental unit, such as cleaning and return of Landlord's property provided with the rental unit. Under Section 37(2) of the Act the Tenants are required to leave the rental unit clean and undamaged. Therefore, as the tenancy was still continuing at the time of this hearing, I determined that any findings made on damages to the rental unit would be premature.

The Landlords expressed concern and submitted that in the past the Tenants had reneged on previous agreements and there were no assurances the Tenants would leave the rental unit clean and undamaged. The Landlords were informed that I was unable to make a determination based on an anticipation of what the Tenants may or may not do in the future. As a result, I determined that the only items that would be heard would be the Landlords' monetary claim for: unpaid rent; unpaid utilities; and failure to pay the pet damage deposit.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to unpaid rent for additional occupants?
- Are the Landlords' entitled to keep the Tenants' security and pet damage deposits (collectively referred to as the "Deposits")?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

The parties agreed that this tenancy started on July 17, 2016. The parties signed a residential tenancy agreement which was accompanied by 12 pages of 42 addendums, each of which were initialed by the Tenants. The parties agreed that the tenancy was for a fixed term period of two years and was set to expire on July 30, 2018, after which time the Tenants were required to vacate the rental unit.

The Landlords testified that the rent payable pursuant to the tenancy agreement for the first year, namely July 17, 2016 to July 30, 2017 was \$2,900.00 in advance of the 30th day of each month. The tenancy agreement states that for the period starting July 30, 2017 the rent payable will be \$3,030.00 per month. The Tenants initialled this portion of the tenancy agreement verifying the rent payable for the second year of the tenancy.

The female Tenant explained that all the Tenants had signed the tenancy agreement in a rush and they had not read it all and were not aware that the rent was to increase in the second year of the tenancy to \$3,030.00. The female Tenant testified that the Landlords failed to point this out and had they been aware of this, they would have paid the increase amount from July 30, 2017 onwards. However, the female Tenant confirmed that the part of the tenancy agreement showing the rent payable for the second year was initialled by the Tenants.

The parties agreed the Tenants paid the Landlords \$1,450.00 as a security deposit at the start of the tenancy. The Landlord testified that despite requesting \$1,450.00 from the Tenants as a pet damage deposit, the Tenants only paid \$250.00 in August 2016 towards this amount. The Landlords explained that despite repeated requests, the full amount still remains unpaid. The Landlords confirmed that they still retain a total of \$1,700.00 in Deposits and request a Monetary Order for the remaining amount of \$1,200.00 for the pet damage deposit. The Tenants confirmed that they had only paid \$250.00 towards the pet damage deposit.

The Landlords stated that the Tenants have failed to pay rent of \$3,030.00 on August 30, 2017 for September 2017 and have only paid \$2,900.00 for July 2017 rent which

was the first month that the increased amount was payable. Therefore, the Landlords now seek \$3,160.00 (\$130.00 + \$3,030.00) in unpaid rent from the Tenants.

In addition, the Landlords testified that they seek \$114.00 from each Tenant that was occupying the rental unit outside of the permitted amount of Tenants allowed on the tenancy agreement since the first month of the tenancy. This was the "Other" issue on the Landlords' application.

In support of this, the Landlords pointed me to clause 14 of the addendum to the tenancy agreement and confirmed that it provides tenancy for only five Tenants, with a maximum of six Tenants to reside at the rental unit. The Landlords explained that clause 14 states that if the Tenants have an extra sixth person, the Tenants will have to pay an additional \$114.00 in rent per month due to the extra wear and tear, thus bringing the total to \$3,014.00 for six tenants. I also note that clause 12 of the addendum stipulates that if a sixth adult is seen or lives at the address, the rent will increase or a notice to end tenancy will be issued if there is a violation of the terms.

The Landlords testified they only agreed to allow the Tenants five persons to reside at the rental unit. Instead the Tenants were alleged to have brought several additional occupants and families to stay into the rental unit during the first month of the tenancy as evidenced by the excessive garbage seen by the Landlords at the rental unit. The Landlords testified that they verbally informed the Tenants of this breach but after giving the Tenants lots of opportunities to deal with the excessive occupants, the Tenants continued to have more than five people allowed living at the address.

The Landlords were asked to point me to evidence in their submissions where the Tenants had been put on written notice of the alleged additional occupants. The Landlords testified that starting from February 2017 they issued the Tenants multiple breach notices about the additional authorised occupants, including other alleged breaches of the Act by the Tenants.

The Landlords testified that because they were dealing with a number of breaches by the Tenants during this tenancy they did not serve the Tenants with a notice to end tenancy for cause until June 21, 2017, which the Tenants then disputed. That notice to end tenancy was provided into evidence and shows that one of the reasons for ending the tenancy was due to an unreasonable number of occupants in the rental unit. The female Tenant testified that before the tenancy began, the Tenants had verbally informed the Landlord multiple times that, in addition to the permitted five Tenants, they would also be having two other adults, a child, and her granddaughter residing at the

rental unit for a total of nine people. The female Tenant testified that this was not an issue for the Landlords which is the reason why the Landlords did not take action to address this issue at the start of the tenancy. The female Tenant explained the additional parties and the families that the Landlords were testifying about were not occupants but occasional guests which the Landlords happened to see when they came over for an inspection.

When the female Tenant was asked why she had allowed additional occupants to stay at the rental unit when the signed tenancy agreement limited the amount to five occupants, the female Tenant again explained that she was not aware of this provision of the tenancy agreement as they had not read it when they signed and initialed it.

The female Tenant acknowledged that they had been served with written breach letters as testified to by the Landlords. However, they did not agree with it because the Landlords had previously not had any issue with the number of occupants and only started to make it an issue when other matters of dispute came up during the tenancy.

The Tenants confirmed that they had paid rent for August 2017 in the amount of \$2,900.00. The Tenants also confirmed that they had not paid any rent for September 2017 despite acknowledging that the due date of August 30, 2017 had passed and they were now in rental arrears. The Tenants testified during the hearing that they would be making the rent payment on the day of this hearing because they are all getting paid.

The Landlords responded to the Tenants' evidence denying that they had given authority for the Tenants to have more than six people to occupy the rental unit.

The Landlords testified that the Tenants were required to pay utilities by putting them into their names and making payment directly to the utility provider. The Landlords testified that it has come to their attention that the Tenants are in utility arrears in the amount of \$243.12 and request this amount be awarded to them as the Tenants are not likely to pay this debt.

The Tenants acknowledged that they were in utility arrears for the amount of \$243.12 but explained that they had only recently received the utility bill and were now in the process of paying the outstanding amount in monthly installments pursuant to a payment plan they have with the utility provider. The parties confirmed that the latest utility bill sent to the Tenants was issued in August 2017.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act. Section 13(2) (iv) of the Act requires that a tenancy agreement should stipulate the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

Having examined the tenancy agreement provided by the parties into evidence, I find it clearly provides that in the first year of the tenancy, the rent payable would be \$2,900.00 per month. I reject the Tenants' claim that they were not made aware by the Landlords or were not aware of the amount of rent payable for the second year. A party signing a legal contract is obligated to read and understand all of the terms of that agreement or seek counsel on it before agreeing to enter into it.

I further find that because the Tenants initialed this provision of the agreement, this contradicts the Tenants' testimony that they were not aware of the amount payable for the second period of the tenancy. Therefore, I find the amount of rent payable starting July 30, 2017 was \$3,030.00 on the 30th day of each month thereafter. As a result, I concur that the Tenants are in rental arrears of \$130.00 for August 2017 rent, and owe \$3,030.00 for September 2017 rent which remains unpaid at the time of this hearing.

With respect to the Landlords' monetary claim for additional rent payable by the Tenants for having additional occupants in this tenancy, I turn to the addendum clauses in the tenancy agreement. I find the agreement made it clear that for an additional occupant, namely a sixth tenant, the Tenants were required to pay an additional rent of \$114.00 per month. I find this agreement is consistent with Section 13(2) (iv) of the Act.

I find the Tenants violated this agreement from the onset of this tenancy by having four additional occupants above and beyond that of what was allowed in the agreement signed by the Tenants. Therefore, I find the Landlords are eligible for additional rent.

In determining the amount of additional rent payable for the additional occupants I must take into consideration Section 7(2) of the Act which requires that a party claiming compensation from another party who does not comply with the Act, the regulations or the tenancy agreement must do whatever is reasonable to mitigate loss.

The parties provided conflicting oral evidence as to when the Tenants were put on notice of the breach; the Tenants state that the Landlords were notified before the

tenancy began and the Landlords state that the Tenants were made aware of the breach one month into the tenancy. I find this evidence is not reliable as it is based on disputed oral evidence only. Instead, I am only able to conclude that the Landlords failed to deal properly and expeditiously with this breach until the Tenants were put on notice in writing in February 2017 which then eventually led to the service of the notice for cause in June 2017 which was well into the tenancy.

However, I must balance the Landlords' slow response with the fact that the Tenants have enjoyed use and occupancy of the rental unit from the onset of the tenancy for an extra four occupants, only one of which was contemplated and allowed by the tenancy agreement.

Although the Landlords insisted that the \$114.00 provided for by the clause in the tenancy agreement should apply to each extra occupant, I find there is nothing in the agreement that clearly and unequivocally stipulates how much the rent is to vary if there are more than six tenants residing in the rental unit as it does not contemplate more than six people. Neither, were the Landlords able to provide sufficient evidence of the exact number of extra occupants which were alleged to have exceeded the capacity of a guest or for what periods of time they occupied the rental unit.

Indeed, the agreement cautions that if the occupants exceed more than six people, the Landlords would seek the ending of the tenancy. In this case, the remedy under the Act for the Landlords should have been to give proper notice to the Tenants straight away. Had the Landlords pursued this course of action, then it would not have likely resulted in the increased amount the Landlords now seek for each additional occupant in this tenancy.

As I have made a finding the Tenants have breached the Act by having more than the allowed occupants contrary to the signed agreement, but the Landlords have failed to mitigate loss, I limit the Landlords award for additional payment of rent for a period of only seven months at \$114.00 (from March 2017 to September 30, 2017). Therefore, the total amount owed in additional rent by the Tenants is \$798.00.

With respect to the Landlords' claim for payment of the remaining amount of the pet damage deposit, the Landlords' remedy for a failure of the Tenants to pay this full amount was to end the tenancy with a notice for cause. In this case the Landlords did not utilise this remedy. As the tenancy is now shortly to end, I find this issue is now moot and I dismiss this portion of the Landlords' claim without leave to re-apply.

With respect to the Landlords' claim for unpaid utilities, the Tenants acknowledged that they are in utility arrears but that they were in the process of paying this amount off with their utility company. In this case the payment of utilities is between the Tenant and the utility provider, and not the Landlords and the Tenants.

Therefore, I find there is no jurisdiction for me, at this moment in time, to award the Landlords unpaid utilities as the tenancy is still alive and the Tenants must clear all debts before they vacate the rental unit. The Landlords have failed to disclose any loss to them for utilities because the loss is currently with the utility company. However, if the Tenants fail to pay the utilities by the end of the tenancy, and the utility company applies those charges to the Landlords through property taxes, the Landlords will be at liberty to recover this loss from the Tenants at that point. For these reasons, this portion of the Landlords' claim is dismissed with leave to re-apply.

As the Landlords had to file this claim in order to recover unpaid rent which was owed at time of this hearing, as well as successfully arguing additional rent owed, I grant the Landlords the recovery of the \$100.00 filing fee pursuant to Section 72(1) of the Act.

Accordingly, I find the Landlords are to be issued a Monetary Order for a total of \$4,058.00 (\$130.00 + \$3,030.00 + \$798.00 + \$100.00). This order must be served on the Tenants and may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. Copies of this order are attached to the Landlords' copy of this Decision.

The Tenants must pay this amount to the Landlords forthwith. However, the Landlords may obtain part of this relief through deduction from the Tenants' Deposits of \$1,700.00. This authority comes from Section 38(3) of the Act which states that a landlord may retain from a security deposit or a pet damage deposit an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid. Therefore, if the Tenants fail to pay the debt ordered to the Landlords in this Decision, the Landlords may recover any balance through the Deposits and/or through enforcement in the courts after the tenancy ends on September 30, 2017. It is important to note that if the Tenants make payment, the Tenants' Deposits must still be dealt with in accordance with the strict requirements of Section 38(1) of the Act; the parties should apprise themselves of these provisions before taking any action.

The Tenants are also cautioned that pursuant to the Act, they are to leave the rental unit clean and undamaged at the end of the tenancy, which includes returning any property

provided in the rental unit as undamaged. The parties are also cautioned that the provisions respecting the move-out condition inspection report also still apply.

Conclusion

The parties agreed in a previous hearing to end this tenancy by mutual agreement on September 30, 2017 for which the Landlords were issued with an Order of Possession. Therefore, the Tenants' Application to cancel the notice to end tenancy for cause and recover their filing fee, and the Landlords Application for an Order of Possession, were dismissed without leave to re-apply.

The Tenants have been found to owe unpaid rent, additional rent, and the filing fee to the Landlords for a total of \$4,058.00. The Landlords may recover this loss using the attached Monetary Order and/or through deduction of the Tenants' Deposits.

The Landlords' Application for the Tenants to pay the full pet damage deposit is dismissed as the tenancy is to shortly end. The Tenants must settle any outstanding utilities arrears with their utility company at the end of the tenancy. The Landlords are at liberty to re-apply for unpaid utilities from the Tenants if these are levied on the Landlords by the utility company. The remainder of the Landlords' monetary claim is premature and is hereby dismissed with leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: September 05, 2017

Residential Tenancy Branch