



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR MT MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord's 10 Day Notice pursuant to section 66; and
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence.

The tenant indicated at the beginning of the hearing that he had moved out on June 2, 2018. As this tenancy has now ended, the tenant's non-monetary portion of his application was withdrawn.

Preliminary Issue – Landlord's Evidence

The tenant testified in the hearing that he did not receive the landlord's evidence for today's hearing. The landlord admitted he failed to serve the tenant with his evidence for the hearing, and had only provided the Residential Tenancy Branch with his evidence

package. The landlord argued that the tenant was already in possession of these documents, which included email correspondence and the tenancy agreement.

The tenant requested that the evidence be excluded as both he was not served with the evidence for today's hearing.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was June 21, 2018.

Although the landlord testified that the tenant was already in possession of the documents he had submitted, it was undisputed that that he did not serve the evidence to the tenant in accordance with Rule 3.15. On this basis I find that the landlord's evidence was not served within the timelines prescribed by rule 3.15 of the Rules. I indicated to both parties that the landlord's evidence would not be admitted for the hearing.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on May 15, 2017, and ended on June 2, 2018. Monthly rent was set at \$1,450.00, which the tenant testified was split between himself and his co-tenant. Both parties were on the tenancy agreement as tenants, but paid their portion of the rent separately to the landlord. The tenant paid the landlord a security deposit in the amount of \$725.00, which the landlord still holds.

The tenant is making a monetary claim for \$550.00 for reimbursement the rent paid for May of 2018. The tenant testified that he had paid more than his portion of the rent to the landlord, although the agreement was that the landlord would collect payment from the two tenants separately. The tenant testified in the hearing that the landlord failed to notify him that his co-tenant failed to pay his portion until he received the 10 Day Notice from the landlord.

The landlords responded that the onus fell on the tenants to pay their rent on time as per the *Act* and tenancy agreement.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *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 a right under this Act to deduct all or a portion of the rent.*

Residential Tenancy Policy Guideline #13 clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

“A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. 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.”

It was undisputed that the two tenants were co-tenants, and owed a combined rent of \$1,450.00 to the landlord. Regardless of the arrangement between the two parties, or with the landlord, on how the payments were made, the tenants were responsible for paying the landlord the full rent as required by section 26 of the *Act* and written tenancy agreement.

The tenant applied for a refund of \$550.00 in rent payments as he felt that he paid more than his portion of the rent. As clearly stated in Policy Guideline #13 above, “the responsibility falls to the tenants to apportion amongst themselves the amount owing to the landlord”. Despite the arrangements made between the parties about how payments were made, the responsibility falls on the co-tenants to ensure that rent is paid in accordance with the *Act* and tenancy agreement. I find the tenant is not entitled to a refund of the \$550.00 paid by the tenant towards the outstanding rent owed by the co-tenant. The tenant’s monetary application is dismissed without leave to reapply.

Conclusion

As the tenant moved out on June 2, 2018, the tenant’s application relating to the 10 Day Notice was withdrawn.

I dismiss the tenant’s monetary application without leave to reapply.

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: June 29, 2018

Residential Tenancy Branch