



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR
 MNRL-S, MNDCL, OPN, OPR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant D.M. under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Landlord’s Use of Property (the “One Month Notice”), and cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

This hearing also dealt with a cross-application filed against both Tenants by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession because the Tenant’s gave notice to end the tenancy and because a 10 Day Notice was served. The Landlord also sought retention of the security deposit and a Monetary Order for outstanding rent and other money owed as well as recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the legal counsel for the Tenant C.D., who provided submissions, and the Landlord, who provided affirmed testimony. The Tenant D.M. did not attend. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondents must be served with a copy of the Application and Notice of Hearing. Although legal counsel for the Tenant C.D. attended and confirmed receipt of these documents by C.D. on July 12, 2018, the Tenant D.M. did not attend the hearing. As a result, I confirmed service of these documents on him as outlined below.

The Landlord testified that on July 12, 2018, the Application and the Notice of Hearing were personally served on the Tenant D.M. As a result, I find that the Tenant D.M. was personally served with the Application and the Notice of Hearing on July 12, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address confirmed in the hearing.

At the request of legal counsel for C.D., copies of the decision will be both e-mailed and mailed to them at the addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

Rule 7.1 of the Rules of Procedure states that a dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party. As the Tenant D.M. failed to attend the hearing of his own Application, and the Landlord and I attended on time, ready to proceed, I therefore dismiss his Application without leave to reapply.

Based on the above, the hearing therefore proceeded based only on the Landlord's Application.

Preliminary Matter #2

The Landlord testified that as of July 2, 2018, the Tenant D.M., who had been over holding the rental unit, had vacated. As the parties agreed that the Tenant C.D. had previously vacated the rental unit, the Landlord withdrew her Application seeking an Order of Possession as both Tenants have now vacated the rental unit. As a result, the hearing proceeded based only on the Landlord's monetary claim.

Preliminary Matter #3

At the outset of the hearing the Landlord identified that she had amended her claim to include \$50.00 in late fees for June and July, \$210.00 in lost wages, \$533.07 in cleaning, garbage removal and key replacement costs, and \$1,400.00 in lost rent for July 2018.

I advised the Landlord that I did not have a copy of an Amendment to an Application for Dispute Resolution (an "Amendment") before me for consideration and asked how and

when she had filed it. The Landlord stated that she had submitted three pages of evidence in relation to these claims but had not filed an Amendment as she did not know that she was required to do so.

Rule 4.1 of the Rules of Procedure states that an Applicant may amend a claim by completing an Amendment form and filing it, along with supporting evidence, with the Residential Tenancy Branch (the "Branch"). Rule 6.2 also states that the hearing is limited to matters claimed on the Application. As the Landlord did not file an Amendment seeking \$50.00 in late fees for June and July, \$210.00 in lost wages, and \$533.07 in cleaning, garbage removal and key replacement costs, I have not considered or made any finding of fact or law in relation to these claims.

However, rule 4.2 of the Rules of Procedure states that the Application may be amended in the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the date the Application was filed. The Landlord testified that the Tenant D.M. remained in the rental unit on July 1, 2018, and as a result, the Tenants owe \$1,400.00 in rent for July.

Based on the above, I find it reasonable to amend the Application in the hearing to allow the Landlord to seek \$1,400.00 in rent for July 2018. The Application was therefore amended to include loss of rent for July 2018 pursuant to the *Act* and the Rules of Procedure.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Preliminary Matter #4

Legal counsel for the Tenant C.D. stated that both she and the Landlord had attended the hearing prepared to settle this matter. The parties had intended to settle the matter for only one of the Tenants listed in the tenancy agreement and the Landlord intended to file another Application seeking the balance of money owed from the other Tenant. However, both parties agreed that D.M. and C.D. were co-tenants under the same tenancy agreement and were unaware that Tenants are jointly and severally liable under the *Act*. The Landlord was also unaware that they could not split their claim. As a result, settlement could ultimately not be reached in the hearing.

When settlement could not be reached, legal counsel for the Tenant C.D. requested an adjournment as they stated they only received their client's file yesterday and have not received proper instructions for anything other than a settlement. Although the Landlord initially considered agreeing to the adjournment, ultimately she objected and requested to proceed with the hearing as scheduled.

Section 7.8 of the Rules of Procedure states that at any time after the dispute resolution hearing begins, the arbitrator may adjourn the hearing and that a party or their agent may request an adjournment. Section 7.8 also outlines criteria that may be considered in assessing whether or not to grant an adjournment such as the likelihood of the adjournment resulting in resolution, the degree to which the need for adjournment arises out of intentional actions or neglect of the party seeking the adjournment, whether the adjournment is required to provide a fair opportunity for a party to be heard, and the possible prejudice to each party.

Although legal counsel for C.D. argued that an adjournment is required as they only received their client's file yesterday and have not received proper instructions for anything other than a settlement, the parties agreed earlier in the hearing that the Landlord's Application and Notice of Hearing were received by C.D. on July 12, 2018. As a result, I find that the Tenant had sufficient notice of the hearing. Further to this, I find that the reason for the adjournment request stems primarily from the Tenant's failure to provide adequate information to their legal counsel or from legal counsel's failure to acquire proper instructions and details from their client prior to the hearing. As a result, I find that the need for adjournment arises out of intentional actions or neglect of the party seeking the adjournment, or their agent, and I therefore decline to grant the adjournment. As a result, the hearing proceeded as scheduled.

Issue(s) to be Decided

Is the Landlord entitled to compensation for outstanding rent and to withhold the security deposit against any rent owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy agreement began on April 1, 2018, that rent in the amount of \$1,400.00 is due on the first day of each month, and that a security deposit in the amount of \$700.00 was paid, which the Landlord still holds. In the hearing the parties agreed that these are the correct terms of the tenancy agreement.

The parties agreed that the Tenant C.D. ended the tenancy effective June 30, 2018, by way of written notice pursuant to section 45.1 of the *Act*. There was no disagreement between the parties that \$175.00 remains outstanding for June rent and that no rent for July has been paid. There was also agreement between the parties that the Tenant's C.D. and D.M. rented the rental unit together under one tenancy agreement.

The parties agreed that the Tenant C.D. vacated the rental unit in compliance with her written notice; however, the Landlord stated that D.M. remained in the rental unit until July 2, 2018, despite the fact that the tenancy had ended and no new tenancy was entered into. The Landlord stated that as rent is due on the first day of each month and D.M. remained in possession of the rental unit on July 1, 2018, full rent in the amount of \$1,400.00 is owed for July. Further to this, the Landlord stated that she could not re-rent the unit for July 1, 2018, despite the fact that it would have been easy to do so, as she could not be confident that both Tenants would vacate the rental unit on June 30, 2018; which they did not.

Legal counsel for the Tenant C.D. argued that C.D. is not responsible for any of the rent payable for July as she vacated the rental unit in compliance with her written notice to end tenancy. As the tenancy was ended pursuant to section 45.1, legal counsel submitted that the Tenant C.D. should therefore not be responsible for the fact the Tenant D.M did not vacate the rental unit as required under section 45.3 of the *Act*. In any event, legal counsel for C.D. also argued that the Landlord should not be entitled to any rent for July as she has not attempted to mitigate the loss of July rent by attempting to re-rent the unit.

As a result, the Landlord sought compensation in the amount of \$1,575.00 for outstanding rent and authorization to withhold the \$700.00 security deposit against this amount.

Analysis

As both parties agreed that \$175.00 is owed for June rent, I find that the Landlord is therefore entitled to compensation in the amount of \$175.00 for this outstanding rent. Section 37 of the *Act* states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends. Based on the testimony and documentary evidence before me, I find that the tenancy ended for both C.D. and D.M. on June 30, 2018, at 1:00 P.M. as a result of written notice to end the tenancy served on the Landlord by C.D. pursuant to section 45.1 of the *Act*. However, section 57 of the *Act* also states that a landlord may seek compensation from a tenant who continues to occupy a rental unit after the tenancy has ended for any of the time period in which the overholding tenant occupies the rental unit after the end of the tenancy. Further to this, section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for any damage or loss that results

As there is no evidence to the contrary, I accept the Landlord's testimony that the Tenant D.M. overheld the rental unit until July 2, 2018. Further to this, I accept the Landlord's testimony that they were unable to re-rent the rental unit for July as the Tenant D.M. remained in the rental unit after the first day of the month. Based on the above, I find that the Landlord is therefore entitled to rent on a per diem basis for July 1, 2018, and July 2, 2018, in the amount of \$45.16 per day (\$1,400.00 divided by 31 days) for overholding of the rental unit and \$1,309.68 for loss of the remaining rent for July.

Policy Guideline #13 states that co-tenants, defined as two or more tenants who rent the same property under the same tenancy agreement, are jointly and severally liable for any debts or damages relating to the tenancy. As there was agreement between the parties that D.M. and C.D. were co-tenants of the rental unit, I therefore find that both Tenants are responsible for the \$1,575.00 owed in outstanding rent.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to recovery of the \$100.00 filing fee and to retain, in full, the \$700.00 security deposit paid by the Tenants in partial satisfaction of the above owed amounts. Based on the above the Landlord is therefore entitled to a Monetary Order in the amount of \$975.00; \$1,575.00

in rent, plus \$100.00 for recovery of the filing fee, less the \$700.00 security deposit retained by the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$975.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: July 31, 2018

Residential Tenancy Branch