



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, OPR, MNRL-S, MNDL-S, FFL; AS, CNR, LAT, LRE, OLC, FFT

Introduction

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

- an order of possession based on the tenant's written notice to end the tenancy pursuant to section 55;
- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for damage to the unit and unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord confirmed that she had received the tenant's application and evidence. As the landlord did not raise any issues regarding service of the tenant's application and evidence, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Service of Landlord's Evidence

The landlord testified that on August 14, 2018 she forwarded the landlord's application for dispute resolution hearing package including evidence via registered mail to the tenant. The landlord testified that the evidence sent to the tenant was the same evidence sent to the Residential Tenancy Branch ("RTB"). During the hearing, the landlord testified that in particular she sent a copy of the tenancy agreement, two separate tenancy agreement amendments, 30 day written notice, unpaid utility bill, utility reactivation bill and photographs. The landlord provided a Canada Post receipt and tracking number as proof of service.

In reply, the tenant testified that although he received a copy of the landlord's hearing package, he did not receive any evidence from the landlord. Specifically, the tenant testified that he did not receive any photographs.

Upon review, I note that the landlord did not provide any photographs to RTB, rather she provided videos.

I prefer the testimony of the landlord over the tenant. The landlord, although incorrectly identified videos as photographs, was consistent in her testimony and did not waiver. The tenant's evidence, on the other hand, was less credible. The tenant was vague. He did not describe what documents he did receive. The landlord's testimony has persuaded me on the balance of probabilities that the tenant received the evidence provided in the landlord's evidence package. For this reason, I may rely on the landlord's evidence to form part of my decision.

Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlord's application and evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the tenant's written notice to end the tenancy?

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for damage to the unit and unpaid rent?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the tenant entitled to an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld?

Is the tenant entitled to cancellation of the landlord's 10 Day Notice?

Is the tenant authorized to change the locks to the rental unit?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for this application?

Background and Evidence

The parties have provided conflicting testimony in relation to the tenancy details.

The landlord testified that this tenancy began January 15, 2016 on a month-to-month basis with rent in the amount of \$2,160.00 payable on the first of each month. The landlord testified that this tenancy included three tenants; tenant JL, tenant CT and the tenant named in this application, tenant FK. The landlord testified that although only tenant JL was on the written tenancy agreement, all three tenants signed two separate tenancy agreement amendments. It is the landlord's position that these amendments served to modify the written tenancy agreement to include all three tenants. The landlord contends that these signed amendments were a requirement of her insurance provider. The landlord testified that she normally collected rent in the amount of \$2,160.00 from tenant JL but at times collected rent from the individual tenants. The

landlord testified that the tenants remitted a security deposit in the amount of \$1,080.00 at the start of the tenancy, which the landlord still retains in trust.

In contrast, the tenant testified that the original tenancy began April 1, 2012 on a month-to-month basis with rent in the amount of \$2,050.00 payable on the first of each month. The tenant testified that this original tenancy included two tenants, tenant CC and tenant AA. The tenant testified that at some point tenant CC moved out and in October of 2015 tenant JL, tenant CT and himself moved in with tenant AA. The tenant testified that during this time, he paid \$600.00 towards rent. The tenant testified that at times he paid his rent directly to the landlord and at other times he gave it to another tenant who submitted it to the landlord on his behalf. The tenant denies signing a tenancy agreement or any amendments on January 15, 2016. The tenant testified that sometime in 2016, tenant AA moved out, leaving only him, tenant JL and tenant CT. The tenant has provided a copy of the 2012 tenancy agreement.

Landlord's Claim

The landlord testified that on July 1, 2018 tenant JL and tenant CT submitted written notice to vacate the rental unit effective August 1, 2018. On August 1, 2018 tenants JL and CT vacated the unit as per their written notice, while tenant FK remained in the rental unit. The landlord seeks to the end the tenancy on the basis of the written notice provided by tenant JL and tenant CT.

The landlord applied for a monetary order in the amount of \$5,600.00 for the following;

Item	Amount
Damage to unit and property	\$3,500.00
August rent	\$2,100.00
Total Monetary Claim	\$5,600.00

The landlord testified that the tenant has caused significant damage to the unit and property. The landlord has not provided receipts or invoices for any repairs. The landlord testified that she has not received rent from the tenant since July 2018 and therefore seeks August rent in the amount of \$2,100.00.

Because the landlord did not receive August rent and the tenant was still residing in the unit, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on August 2, 2018. If the landlord is unsuccessful in ending the tenancy on the

basis of written notice, the landlord seeks to end the tenancy for non-payment of August rent.

In reply, the tenant testified that he was unaware of whether tenant JL or CT gave written notice to vacate but he is certain he did not give notice. The tenant did not reply to the landlord's allegation of damage; however the tenant did acknowledge that he has not paid rent since July 2018.

Tenant's Claim

The tenant testified that the landlord entered the unit on August 1, 2018 without prior notice and for this reason he seeks authorization to change the locks and set conditions on the landlord's right to enter.

In reply, the landlord testified that it was her expectation that she would have vacant possession of the unit August 1, 2018 as per the written notice provided by tenants JL and CT.

Analysis

Order of possession

Section 13 of the *Act* requires that tenancy agreements set out the correct legal names of the landlord and tenant. As per section 14 of the *Act*, a tenancy agreement may be amended to add, remove or change a term other than a standard term, only if both the landlord and tenant agree to the amendment.

Between the two tenancy agreements provided by the parties, I prefer that of the landlord. The tenancy agreement submitted by the tenant is from 2012 and does not name him, or any of the most recent tenants. Based on the evidence before me and on the balance of probabilities, I find the tenancy agreement submitted by the tenant is in relation to a past tenancy, not his.

The tenancy agreement provided by the landlord sets out the name of the landlord and tenant JL and therefore meets the requirements of section 13 of the *Act*. Based on the submitted amendments and pursuant to section 14 of the *Act*, I find that on January 15, 2016, all parties agreed by way of written signature to amend the tenancy agreement to include tenants CT and FK.

Based on the above, I find that tenants JL, CT and FK were co-tenants. As per Residential Tenancy Policy Guideline #13, 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. If one tenant gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice and all tenants must move out, even where the notice has not been signed by all tenants.

Section 45 of the *Act*, requires a tenant that seeks to end a periodic tenancy, to give written notice a full month before rent is due under the tenancy agreement. Because the tenancy agreement indicates that rent is due on or before the first calendar day of the month, the tenants were obligated to give notice on or before June 30, 2018 to successfully end the tenancy July 31, 2018. As the tenants' notice was dated July 1, 2018, I find this notice serves to end the tenancy August 31, 2018, not August 1, 2018. Accordingly, I find the landlord was entitled to vacant possession effective August 31, 2018. As per section 55 of the *Act* a landlord may request an order of possession of a rental unit if a notice to end tenancy was given by the tenant. Based on the notice before me and pursuant to section 55 of the *Act*, I grant an order of possession to the landlord.

Damages

Although the landlord testified to the condition of the rental unit and the estimated cost in repairing it, I find the claim to damages premature as the tenant had not vacated the rental unit at the time the application was made. The landlord has not presented evidence in the form of invoices or work orders. For these reasons I dismiss the landlord's application for compensation for damage in the amount of \$3,500.00, with leave to reapply.

Unpaid Rent

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes 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.

Because co-tenants are jointly and severally liable for any debts or damages relating to the tenancy the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The evidence before me proves current rent for this unit is \$2,160.00 however the landlord only applied for a monetary order in the amount

of \$2,100.00 for unpaid rent. In the absence of a completed amendment form the landlord's monetary claim for unpaid rent remains at \$2,100.00 as stated in her original application. I find the landlord provided undisputed evidence that the tenant failed to pay full rent for August 2018. Therefore, I find that the landlord is entitled to \$2,100.00 in rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application for a total award of \$2,200.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,080.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,120.00.

As the tenancy is set to end and the tenant's claim may only be sought in relation to an ongoing tenancy, I dismiss the tenant's claim in its entirety. As the tenant was not successful in this application, I find the tenant is not entitled to recover the filing fee paid for the application.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

The landlord's claim for compensation for damage is dismissed with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$1,120.00.

The tenant's entire claim is dismissed 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: September 24, 2018

Residential Tenancy Branch