Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

The landlord applies to recover rent for April 2018 and a $25.00 bank charge.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did this tenancy continue after the tenants vacated, entitling the landlord to continue to claim rent?

Background and Evidence

The rental unit is a one bedroom apartment. There is a written tenancy agreement. The tenancy started in August 2015. The monthly rent was $987.03. The tenants paid a $462.50 security deposit and a $462.50 pet damage deposit.

The tenants encountered work difficulties and their normal income was reduced. They did not pay the rent due March 1, 2018 on time. The landlord issued a ten day Notice to End Tenancy and posted it to the tenants' door on March 6.

The tenants paid the rent in full on March 12.

The tenant Ms. K. testifies that her co-tenant Mr. H. spoke with the landlord's representative Mr. C. at that time and was told the tenants "had til the end of the month."

Mr. C. testifies that the payment voided the Notice. He agrees he spoke to Mr. H. who indicated he wanted to leave at the end of the month and told him that the tenants must give him a written notice to do so. He says none was ever received.

The tenants proceeded to vacate the rental unit at the end of March. Mr. C. says he only discovered the move as they were actually leaving.

The parties conducted a move-out inspection together and a report was prepared and signed by Mr. C. for the landlord and by the tenant Mr. H.

On a second document signed by Mr. H. the same day, he indicates that the tenants will be responsible for April's rent. Ms. K. argues that he was bullied into signing. She refers to signed statements from her mother and grandmother to the same effect.

The landlord re-rented the apartment for May 1.

Analysis

The tenants argue that they did not pay the March rent within five days after receipt of the ten day Notice (implying they found it on the door the same day) and as result, the tenancy ended in March and they are not liable for the April rent.

I must reject this argument. Section 90 of the *Residential Tenancy Act* (the "*Act*") provides that a document attached to a door is deemed to have been received on the third day after it is attached. In this case, that would be March 9. The tenants' payment of the amount demanded in the Notice within five days after March 9 would automatically result in the Notice having no effect (s. 46(5) of the *Act*).

The tenants' payment rendered the Notice of no effect in ending the tenancy and the tenancy continued until it was ended by one of the methods provided for in the *Act*. So far as tenants in a month to month tenancy are concerned that is by giving at least one month's written notice to end the tenancy.

It follows that on April 1, 2018 the tenancy was in place and by its terms the tenants were obliged to pay the April rent of $987.03. I award that amount to the landlord.

In any event, the tenant Mr. H. confirmed in writing that the tenants would be responsible for April rent. The allegation of being bullied into signing that document is not supported by evidence of any significant pressure or threat to such an extent as to warrant voiding the document.

The tenants had been paying rent by automatic withdrawal from their bank. On April 1 the landlord attempted to engage the withdrawal procedure but the tenant's had discontinued the service. The landlord was charged $25.00. I award this amount to the landlord. The withdrawal service was withdrawn by the tenants without notice, the landlord was entitled to attempt to use it.

In result, the landlord is entitled to a monetary award of $1012.05 (rounded to the nearest five cents), plus recovery of the $100.00 filing fee for this application.

The landlord's representative Mr. C. states that at the move out inspection the tenants authorized the landlord in writing to retain $580.00 of the deposit money for cleaning and repair. He says the remainder of the deposit money, $345.00, should be applied against the award and a monetary order for the remainder should issue.

I disagree that the tenants have authorized the landlord to keep any of the deposit money. Mr. C. points to the move-out condition report, however in that report the tenants (Mr. H.) have only confirmed; a) that the report fairly describes the condition of the premises at the end of the tenancy and, b) that they has received a copy of the report.

Section 38(4) of the *Act* states that a landlord may only keep deposit money that at the end of a tenancy, the tenant agrees in writing the landlord may retain to pay a liability or obligation of the tenant. I find that there is no such written authorization here.

As a result I deduct the full deposit money from the award, leaving a balance of $187.05. The landlord will have a monetary order against the tenants in that amount.

Of course the landlord is free to apply to recover the cost of cleaning and repair from the tenants, which it assess at $580.00.

Conclusion

The landlord's application is allowed. It will have a monetary order against the tenants, jointly and severally, in the amount of $187.05.

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 18, 2018

Residential Tenancy Branch