Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP WEST COAST
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL –S, FFL, AS, OLC, MNDCT, LAT

Introduction

This hearing dealt with cross applications. The tenant filed an application seeking authorization to assign or sublet the rental unit; orders for the landlord to comply with the Act, regulations or tenancy agreement; monetary compensation for repairs he made to the property; and, authorization to change the locks. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the tenants' deposits.

The landlord's agent and one of the co-tenants, referred to by initials SL, appeared at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing documents upon each other and the Residential Tenancy Branch. The landlord confirmed receipt of the tenant's hearing package. The tenant testified that he had not received the landlord's hearing package.

The landlord had named two co-tenants on the landlord's Application and the landlord's agent testified that a hearing package was sent to each named tenant at the rental unit address via registered mail. The landlord provided the registered mail tracking numbers. A search of the tracking numbers showed that neither tenant picked up their registered mail. The tenant confirmed that he still resides at the rental unit but stated that he does not have a key for the mailbox and he believes a former occupant has it, so he has been unable to retrieve his mail. I was satisfied that the landlord met its obligation to serve the tenant appearing before me in accordance with the Act. However, in recognition the tenant had not seen the landlord's Application and with a view to fairness, I described the remedies sought by the landlord to him and the tenant confirmed he was prepared to respond to the remedies sought by the landlord.

As for the other named tenant, referred to by initials JW, I heard that JW has not resided at the rental unit since November 20, 2018. The landlord's agent confirmed that she was aware of that since early December 2018. Section 89(1) provides that where a monetary claim is sent by a landlord to a tenant by registered mail, the address for service must be the tenant's address of residence or the forwarding address provided by the tenant. I was unsatisfied that the rental unit was JW's address of residence at the time of mailing the hearing package. Therefore, I found JW was not sufficiently served with the landlord's monetary claims and I excluded JW as a named party to this dispute.

As I informed the tenant appearing at the hearing, co-tenants are jointly and severally liable to fulfill the terms of their tenancy agreement. The Monetary Order I issue with this decision is against SL only since JW was not sufficiently served; however, SL is at liberty to pursue JW to apportion the liability amongst them.

On another procedural note, I noted that the parties identified the landlord differently in filing their respective applications. The landlord had identified an individual who is the owner of the property. The tenant had identified the property management company he has been dealing with throughout the tenancy and as named on his tenancy agreement. I was satisfied that both the owner and the property management company meet the definition of "landlord" as provided under the Act and, with consent of both parties, I amended the style of cause to reflect the landlord as being both the owner and the property management company.

Finally, the tenant stated early on in the hearing that he is preparing to move out of the rental unit and confirmed that many of the remedies he had applied for are now moot. The only issue not resolved by way of the end of the tenancy is the tenant's request for monetary compensation and I consider that request in making this decision.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the tenants' deposits?
4. Is the tenant entitled to monetary compensation from the landlord for repairs made to the property?

Background and Evidence

The tenancy started on March 1, 2017. The tenants paid a security deposit of $1,050.00 and the monthly rent was set at $2,100.00 payable on the first day of the month. Starting April 1, 2018 the monthly rent increased to $2,184.00.

Initially, the landlord's agent stated there was no pet damage deposit paid. However, the tenant testified that one was paid and I noted that the tenancy agreement indicates a pet damage deposit was required. The landlord's agent reviewed the accounting records and determined that three partial instalment payments were received for the pet damage deposit in the amounts of $525.00, $200.00 and $125.00 for a total of $850.00.

The rental unit is a house that was occupied by the two tenants and two roommates. There was an altercation between the two tenants on November 20, 2018 after which time co-tenant JW was ordered not to return to the rental unit.

In late November 2018 or early December 2018 the landlord's agent sought to have the tenants' two existing roommates complete applications for tenancy. Tenancy applications were completed but the landlord did not approve the roommates to become tenants. The tenant was not agreeable to the landlord's agent attempting to add these two people as tenants, as they were friends of JW, and he wanted them to move out and pick his own roommates. The tenant submitted that this interference by the landlord is what lead to this dispute.

The landlord's agent was of the view the tenant needed the landlord's authorization to assign or sublet. It was apparent the landlord was confusing "sublet" with a tenant having a roommate so I explored this issue further. I heard that the rental unit was a single family dwelling and did not contain a separate suite and the tenant testified that he wanted to have roommates while he continued to reside in the rental unit. I informed the landlord that where a tenant has a roommate live with them is not a sublet and that roommates living with the tenant are considered "occupants".

I noted that the tenancy agreement provided the following clause with respect to occupants:

OCCUPANTS AND INVITED GUESTS The landlord may not stop the tenant from having guests in the residential premises under reasonable circumstances. If the number of permanent occupants is unreasonable, the landlord may discuss the issue with the tenant and may serve a Notice to End a Residential Tenancy. Disputes regarding the notice may be resolved through arbitration under the Residential Tenancy Act.

The landlord confirmed that the tenant living with two roommates would not have been an unreasonable number of persons occupying the rental unit. However, the landlord's agent attempted to justify her request for the roommates to complete tenancy applications by explaining the landlord wanted to know more about the people living at the property for insurance purposes.

The tenant did not pay rent for December 2018 and on December 3, 2018 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the tenants' door. The 10 Day Notice indicates rent of $2,184.00 was outstanding as of December 1, 2018 and has a stated effective date of December 16, 2018.

The tenant testified that he had the money to pay December's rent but that he withheld it due to the landlord's interference with his right to choose his own roommates. The tenant also acknowledged he did not pay any monies for January 2019.

The tenant requested that he be permitted to occupy the rental unit until January 31, 2019. The landlord was only agreeable to that if the tenant paid the outstanding rent for December and January; otherwise, the landlord requested an Order of Possession effective two days after service. The tenant stated that he would not be paying any rent and did not object to the landlord being provided an Order of Possession effective two days after service.

The landlord requested a Monetary Order to recover the unpaid and loss of rent for December 2018 and January 2019; and, authorization to retain the tenants' deposits.

The tenant requested compensation of $2,000.00 for making repairs to the property. During the hearing, the tenant testified that he had a discussion with a person he believed to be the male co-owner of the property and they had an agreement that the tenant would perform certain repairs. The tenant acknowledged that there was no discussion or agreement concerning payment for his services. The tenant further stated that he did not intend to receive compensation for repairs he made since he usually does these types of things where he lives; however, since the tenancy is ending he wishes to be compensated. I did not seek a response from the landlord because, based on the tenant's own submissions, the tenant did not establish there was an agreement for the tenant to receive compensation for repairs he made or that he may make deductions from rent for repairs made.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very specific and limited circumstances when a tenant may withhold rent, such as: previously overpaid rent or a deposit, emergency repairs made by a tenant, or authorization has been obtained from an Arbitrator or the landlord. The circumstances described by the tenant do not form one of the grounds under the Act for withholding rent.

Based on the submissions from both parties, it is clear to me that the landlord's agent was interfering with the tenant's right to have roommates/occupants of his choosing reside in the rental unit with him. As stated previously, having roommates reside with the tenant does not constitute a sub-let under the Act. Rather, a sub-let occurs where a tenant vacates the rental unit and permits others to occupy the rental unit. The tenancy agreement executed by the parties does not prohibit the tenant from having additional permanent occupants unless the number of occupants is unreasonable and the landlord acknowledged the number of occupants the tenant sought to have was not an unreasonable number. I also find the landlord's explanation for having the potential roommates complete tenancy applications so that the landlord may obtain information about the people residing in the unit of insurance purposes is incredible. Accordingly, I do accept the tenant's position that the landlord's agent was violating the "Occupants and Invited Guests" term of their tenancy agreement. However, as provided in section 26 of the Act, a landlord's violation of the tenancy agreement does not excuse the tenant from paying rent that is due under the tenancy agreement.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

In this case, the tenant did not pay the outstanding rent after receiving a 10 Day Notice. The tenant filed an Application for Dispute Resolution shortly after receiving the 10 Day Notice and he initially indicated he was seeking to dispute the 10 Day Notice but then

he crossed out the request. Even if the tenant had disputed the 10 Day Notice, for reasons explained above, he did not have a legal basis for withholding rent. Therefore, I find the tenancy ended on the stated effective date on the 10 Day Notice, which is December 16, 2018.

I find the landlord entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service of the Order upon the tenant.

Had the tenant paid the rent for December 2018 and nullified the 10 Day Notice, I would have issued orders to the landlord's agent to stop interfering with the tenant's right to have occupants/roommates of his choosing; however, the tenancy is already over due to his refusal to pay rent and the tenant is preparing in to move out. Therefore, issuing an order for the landlord to comply with the tenancy agreement would be of no effect at this point.

Notwithstanding the foregoing, since the landlord's agent is a professional landlord, I strongly encourage the landlord's agent to familiarize herself with the difference between a tenant having roommates and sub-letting. Further information and policy statements of the Residential Tenancy Branch on this subject are found in Residential Tenancy Policy Guideline 19: *Assignment and Sublet* and there is a section entitled "Occupants/roommates".

As for the landlord's monetary claim, I find the landlord is entitled to recover unpaid rent of $2,184.00 for the month of December 2018 and loss of rent of $2,184.00 for the month of January 2019 since the tenant continued to hold possession of the rental unit despite receiving the 10 Day Notice and not paying rent. I authorize the landlord to retain the tenants' deposits in partial satisfaction of the unpaid rent. Accordingly, I provide the landlord with a Monetary Order in the net amount of $2,468.00 [$2,184.00 + $2,184.00 - $1,050.00 - $850.00] to serve and enforce upon the tenant.

As for the tenant's monetary claim for repairs made to the property, I find the tenant failed to establish to my satisfaction that there was an agreement reached with the owner of the property that the tenant would be compensated or authorized to make deductions from rent for repairs he made. Rather, according to the tenant himself, he did not expect to receive compensation when agreeing to make the repairs. Therefore, I find he did so under his own volition and I make no award for compensation or any offset to the amount of rent he owes.

I find both parties violated the tenancy agreement in this case: the landlord interfering with the tenant's right to have occupants/roommates of his choosing and the tenant refusing to pay rent. Therefore, I order both parties must absorb their respective costs of filing their applications and I make no award for recovery of such costs to either party.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to retain the tenants' security deposit and pet damage deposit and is provided a Monetary Order for the balance owing of $2,468.00.

The majority of the remedies sought by the tenant are moot since the tenancy is over and the tenant's monetary claim is dismissed without leave.

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: January 18, 2019

Residential Tenancy Branch