Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0957101 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, OT, FFT

Introduction

In this dispute, the tenant sought the following relief under the *Residential Tenancy Act* (the "Act"):

1. the return of the tenant's security and pet damage deposits, pursuant to section 38 of the Act;

2. compensation for rent that was paid, but that the tenant submits is owed, pursuant to section 67 of the Act;

3. a copy of a new tenancy agreement that may exist between the landlords and the tenant's (former) co-tenants; and,

4. compensation for the cost of the filing fee, pursuant to section 72 of the Act.

The tenant applied for dispute resolution on April 2, 2019 and a hearing was held on June 18, 2019. The tenant, her friend (a witness), the landlord, and an agent for the numbered company landlord attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and call witnesses.

The tenant raised an issue with respect to the service of the landlords' evidence, which I shall address below in a preliminary issue section.

I have reviewed evidence submitted that met the *Rules of Procedure,* under the Act, and to which I was referred, but have only considered evidence relevant to the preliminary issues of this application.

Preliminary Issue: Service of Landlords' Evidence

Under Rule 3.15 of the Residential Tenancy Branch's *Rules of Procedure,* a respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The tenant explained that she did not receive the landlords' evidence until the evening before the hearing, at 6 PM or 7 PM on June 17, 2019. It provided her with "little time to review" in advance of the hearing.

The landlords testified that their evidence package was sent to the tenant by registered mail on May 22, 2019, and that it was accepted (as indicated by the Canada Post website, which I verified after obtaining the tracking number) on May 24, 2019. The recipient did not appear to be the tenant, and the tenant had no idea as to who might have signed for the package. She commented that she shares the post office box with a friend, but that it was not her friend who had claimed for the package.

I note that the landlords' evidence package consisted of 18 pages, which included 3 pages of written submissions by the landlords, a 1-page list of attachments, 3 pages of excerpts from the Act and a policy guideline, 7 pages of text messages, and 4 pages relating to damage to the rental unit. The tenant testified that she did have an opportunity to review the evidence, albeit briefly.

Given that (1) the landlords have proven, based on the Canada Post information, that they provided a copy of their evidence in compliance with the *Rules of Procedure,* (2) the 18-pages are not particularly lengthy (and some of the pages are not what is considered evidence, i.e., written submissions and sections of the Act), and (3) the tenant stated that she did review the evidence, I am accepting the evidence of the landlords and shall consider it accordingly in this decision.

Preliminary Issue: The Tenancy

The tenant testified that she entered into a tenancy with two co-tenants (S-L.H. and M.W.), and all three signed a written tenancy agreement for a tenancy that began on December 22, 2018 and which is a fixed-term tenancy ending on December 21, 2019 (at which point the tenancy continues on a month-to-month basis).

Monthly rent is $2,750.00 and is due on the 22nd of each month. The tenancy agreement references that a security deposit of $1,375.00 and a pet damage deposit of $1,375.00 were required. The tenant testified that she paid $1,400.00 for the security

deposit and $1,400.00 for a pet damage deposit, however. The signatures of all three tenants appear on the tenancy agreement.

After what appeared to be a very poisonous relationship between the tenant and the co-tenants (involving threats of harm by one of the co-tenants), the tenant packed up and left the rental unit on January 22, 2019. The tenant sent a text message to the landlords on January 23, 2019, indicating that she had left the day before.

Where a co-tenant gives proper notice to end a tenancy in compliance with the Act, the tenancy that exists between the co-tenants (regardless of the number of co-tenants) and the landlord will end on the effective date as indicated in the tenant's or tenants' notice to end tenancy. In other words, even if only one co-tenant gives notice to end the tenancy, the tenancy will end for all of the co-tenants.

However, before that can happen, the co-tenant (as is the tenant in this dispute) must provide proper notice to the landlord to end the tenancy.

Section 52 of the Act outlines the legal requirements needed for a notice to end a tenancy to be effective. This section states as follows:

> In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,
>
> (c) state the effective date of the notice,
>
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
>
> (d.1) for a notice under section 45.1, be accompanied by a statement made in accordance with section 45.2, and
>
> (e) when given by a landlord, be in the approved form.

In this dispute, the tenant did not provide a notice to end the tenancy that was signed. The "notice" consisted solely of a text message from the tenant to the landlords, and one that was sent after the tenant decided not to reside in the rental unit. Nor, I find, did the "notice" contain an effective date of the notice. And, while the living arrangement

between the tenant and the co-tenants does not sound even remotely conducive to good living, the text message was insufficient notice to end the tenancy under the Act. That the tenant left the rental unit, for whatever reason, does not end the tenancy.

Given the above, I find that the tenancy between the three tenants and the landlords has continued and shall continue until one or more of the co-tenants (including the tenant) provide the landlords with notice pursuant to section 52 of the Act. Or, for that matter, until the landlords end the tenancy in compliance with the Act.

As the tenancy did not end on January 22, 2019, as submitted by the tenant, the tenant's application is premature. There is, I find, no basis for the tenant to seek compensation against the landlords for either the return of the security deposit (which can only occur after a tenancy ends) or for rent that was paid as required by the tenancy agreement. Therefore, I dismiss the tenant's application without leave to reapply.

The tenant must provide sufficient notice, in compliance with the Act, if she intends to end the tenancy. As for recovering any money that she believes may have been unjustly paid during her time in the rental unit, such a dispute is between her and the co-tenants, and is outside the jurisdiction of the Act.

Conclusion

I hereby dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 19, 2019

Residential Tenancy Branch