



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL MNRL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

The landlord and one of the tenants (CAMC) attended the hearing with Legal Counsel. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the other tenant (ALC) attended the call. The landlord testified that the tenants were individually served, and the tenant who did not attend the hearing (ALC) was served with the Landlord Application for Dispute Resolution and notice of this hearing (the Hearing Package) on July 17, 2019 personally, and an Affidavit of Service has been provided for this hearing. I am satisfied that the tenant (ALC) has been served in accordance with the *Residential Tenancy Act*.

The landlord and the tenant who attended the hearing (CAMC) each gave affirmed testimony and the parties, or counsel were given the opportunity to question each other and give submissions.

No other issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary order as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for loss of rental revenue, fees for late payment of rent, strata fines and the cost to replace a building fob?

Background and Evidence

The landlord testified that this fixed term tenancy began on April 1, 2019 and was to expire on March 30, 2020, however the tenancy ended on June 29, 2019. Rent in the amount of \$2,650.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,325.00, paid in cash, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a strata building, and a copy of the tenancy agreement has been provided for this hearing, which specifies the landlord and both tenants.

The landlord further testified that the tenants paid rent individually by email transfers and each was to pay \$1,325.00. The tenant who didn't attend this hearing (ALC) didn't pay her portion of the rent for May or June, 2019, leaving outstanding \$2,650.00 for her share. In late May, 2019 the tenant who did not attend this hearing (ALC) gave the landlord \$950.00 which brought the arrears to \$1,750.00.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated June 20, 2019 and contains an effective date of vacancy of June 30, 2019 for unpaid rent in the amount of \$2,000.00 that was due on June 1, 2019. The landlord testified that the amount includes a strata fine and other things.

On July 1, 2019, the landlord advertised the rental unit on Craigslist, and a copy of the advertisement has been provided for this hearing. It is advertised at \$2,680.00 per month and was not re-rented until August 28, 2019. A copy of the new tenancy agreement has been provided as evidence. There were no viewers at the beginning, but 2 fellows were interested after that but decided not to move in. The landlord claims loss of rental revenue for the months of July and August, 2019.

The landlord further testified that due to noise complaints the landlord had to pay a strata fine of \$200.00, and a copy of a letter from the strata dated June 3, 2019 has been provided for this hearing, which the landlord claims as against the tenants.

A move-in/move-out condition inspection report was completed, and a copy has been provided for this hearing. On that report, the tenant (CAMC) agreed that the landlord should keep the security deposit. The landlord's daughter-in-law completed the report, but the landlord is not sure if the tenants received a copy.

The landlord wanted to meet with the tenant who did not attend this hearing (ALC) to serve her and to get the building fob, but she didn't want to meet, and the landlord claims \$75.00 for replacing the fob.

The landlord also testified that she did not want to claim against the tenant who attended this hearing (CAMC) and gave her the option to stay and take over the lease, with a different roommate, initially wanting to evict only the other tenant, but she decided to move out. The rental unit was left in good condition and the tenant who attended this hearing (CAMC) returned her fob to the landlord. The only mistake she made was picking the wrong roommate.

The landlord claims \$6,200.00:

- \$1,750.00 for unpaid rent for May and June,
- \$100.00 for late payment of rent charges for 2 months;
- \$5,300.00 compensation for loss of rental revenue for July and August, 2019;
- \$200.00 for strata fines for loud noise;
- \$75.00 for the building fob, and
- \$100.00 as recovery of the filing fee, less the \$1,325.00 security deposit.

The tenant testified that her roommate came from England, needed a place to stay and was recommended to replace a previous roommate. They decided that each would pay rent separately and be responsible for their own portions.

The landlord had requested a meeting, and the tenant met with the landlord on June 19, 2019, which is when the tenant found out that the roommate had not paid her share of the rent. The landlord served the notice to end the tenancy during that meeting. The parties discussed it, and basically, the tenant had 5 days to decide to take on the rent herself or leave. The tenant was not aware that she would be held responsible until future tenants were found. Within that 5 day time frame, there was no way the tenant could afford it and told the landlord that she was going to move out.

The tenant participated in the move-out condition inspection and signed the report and provided a forwarding address on that report, but did not receive a copy until receiving evidence for this hearing. The tenant also agreed on the report that the landlord should keep the \$1,325.00 security deposit because the tenant felt sorry for the landlord being out money, trying to do the right thing.

Submissions of the Landlord:

The landlord submits that the evidence provided and testimony is sufficient to warrant the monetary compensation claimed. The landlord only had a forwarding address for the tenant who attended this hearing (CAMC), and the Residential Tenancy Branch advised that the landlord could start the procedure against that tenant, who could then go to Small Claims Court to get the money owed from the other tenant (ALC). However, the landlord didn't think that route was the right thing to do and filed the claim as against both tenants.

Submissions of the Tenant's Legal Counsel:

The tenant's Legal Counsel submits that no order should be made against his client (CAMC). Residential Tenancy Branch Policy Guideline 13 specifies that ordinarily there is a presumption, but there is clear evidence of the intention of the parties that they were tenants in common and any monetary order should only be against the tenant who did not attend this hearing (ALC). Rent was paid separately, and the landlord believed that as well until receiving advice from the Residential Tenancy Branch. The tenant in common (ALC) caused the notice to end the tenancy to be issued.

Further, there is no evidence respecting the cost of the building fob, and only the tenant who failed to attend this hearing (ALC) failed to return her fob.

The move-in condition inspection report was done prior to this tenancy and the tenant didn't get copy of the move-out condition inspection report. The landlord also applied late, and should any award be made it should be set-off from double the amount of the security deposit. Any monetary order should only be against the tenant who failed to attend this hearing (ALC).

Analysis

Firstly, with respect to unpaid rent, I find that the landlord's arithmetic is incorrect, in that \$1,325.00 was owed for rent for the month of May, 2019 and another \$1,325.00 for June, but testified that the tenant (ALC) paid the landlord \$950.00 in late May. That equates to \$1,700.00 owed, not \$1,750.00 as claimed. There is no dispute that the landlord is owed **\$1,700.00** for unpaid rent.

With respect to the landlord's claim for fees related to the late payment of rent, the regulations to the *Residential Tenancy Act* specify that a landlord may charge a non-refundable fee of not more than \$25.00 for late payment of rent, but must not charge a fee unless the tenancy agreement provides for that fee. I have reviewed the tenancy agreement, and there is no such term, and therefore the landlord's claim of \$100.00 cannot succeed.

With respect to loss of rental revenue, any compensation awarded must put the landlord in the same position that the landlord would be in if the breach of the fixed term had not occurred, and the landlord must do whatever is reasonable to mitigate. In this case, the landlord advertised the rental unit for a greater amount than the tenants had been paying. If the landlord had advertised for the same amount monthly that the tenants had been paying, the landlord may not have incurred the loss of rental revenue claimed.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued on June 20, 2015, which requires the tenants to pay the rent within 5 days, or by June 25, 2019. The landlord could not advertise until after that date. In the circumstances, I find that the landlord is entitled to monetary compensation in the equivalent of 1 month's rent, or **\$2,650.00**, for the month of July, 2019, however I find that by advertising at a greater amount, the landlord did not mitigate, and I dismiss the landlord's application for any additional loss of rental revenue.

I have also reviewed the letters from the strata, and I am satisfied that the landlord has established the **\$200.00** claim for strata fines.

The landlord has not provided any evidence with respect to the cost of the building fob, and I dismiss that portion of the claim.

With respect to who is liable, I have reviewed the tenancy agreement which was signed by both tenants. The Policy Guideline #13 – Rights and Responsibilities of Co-tenants mentioned by the tenant's Legal Counsel states, in part:

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. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Tenants in Common

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

In the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.

The court found in *Leek and Moorlands Building Society v. Clark*, [1952] All E.R. at 788 that “in the absence of express words in the lease, or of authority, one of two joint lessees cannot surrender rights held jointly before the full period of the lease has run.”

The parties agree that the tenants paid rent separately each month by way of e-transfers to the landlord. The tenant testified that the 2 tenants decided that each would pay rent separately and be responsible for their own portions. The landlord received separate payments, but I find was not a part of that agreement. However, I also find that the tenant who attended this hearing (CAMC) was not aware that her roommate (ALC) had not paid her share of the rent until served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenants vacated the rental unit on June 29, 2019 which is the date of the move-out condition inspection, and the notice to end the tenancy given by the landlord is effective on June 30, 2019. The landlord testified that she offered the tenant (CAMC) who attended this hearing to take over the lease with a new roommate, but the tenant declined.

Aside from the Policy Guideline and the finding of the court, having found that the landlord is entitled to compensation for loss of rental revenue for breaching the fixed term, I also find that both tenants committed that breach and that the tenants are jointly and severally liable.

Legal Counsel for the tenant submitted that double the security deposit should be set off from any award made in the landlord's favour because the landlord didn't file the Application for Dispute Resolution within 15 days of the later of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing, and that the landlord failed to provide a copy of the move-out condition inspection report as required by the regulations. The law specifies that a landlord may not make a claim, and the landlord has not done so in this case. The tenant signed the condition inspection report agreeing in writing that the landlord retain the security deposit, and testified that she felt sorry for the landlord being out that amount of money as a result of the roommate's breach of the contract. Having agreed in writing, the doubling provision does not apply. However, that security deposit and consent by the tenant is meant to be off-set from any money owed to the landlord, and in this case for unpaid rent.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the **\$100.00** filing fee.

I order the landlord to keep the \$1,325.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenants for the difference in the amount of **\$3,325.00** (\$1,700.00 unpaid rent + \$2,650.00 loss of revenue + \$200.00 strata fines + \$100.00 filing fee = \$4,650.00 - \$1,325.00 = \$3,325.00).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,325.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants in the amount of **\$3,325.00**.

This order is final and binding and may be enforced.

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: October 30, 2019

Residential Tenancy Branch