



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OLC, MNDC, FF

Introduction

This was a cross-application hearing for dispute resolution under the *Residential Tenancy Act* (“the Act”).

On September 7, 2019, the Tenant applied for dispute resolution under the Act seeking an order for the Landlord to comply with the Act, Regulation, or tenancy agreement. On September 16, 2019, the Tenant amended her application to include a monetary claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

On October 18, 2019, the Landlord applied for dispute resolution under the Act requesting a monetary order for unpaid rent or utilities, and to recover the fee for the application.

The Applications were heard on two different hearing dates. The Landlord and Tenant were present at each hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. Both parties provided documentary evidence in support of their applications. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to comply with the tenancy agreement?
- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement?
- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties testified that they entered into a tenancy agreement to start on April 1, 2016, as a 3-year fixed term tenancy to end March 31, 2019. Rent in the amount of \$1,100.00 was to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$550.00 to the Landlord. On April 1, 2016 the parties also entered into a consent to sublease agreement. The Landlord gave consent to the Tenant sublet the rental unit. The Landlord and Tenant provided a copy of the tenancy agreement and sublease agreement.

Tenant's Application

The Tenant testified that the parties named as the Landlord in her application are a couple. The Tenant testified that with respect to tenancy matters she always dealt with Ms. L.H.L. The Tenant testified that she made appointments and paid the rent owing under the tenancy agreement to Ms. L.H.L. She testified that when there were issues with repairs, she dealt with Ms. L.H.L. The Tenant testified that she only met the other Landlord Mr. C.Y. a few times.

As permitted by the tenancy agreement, the Tenant entered into a tenancy agreement with a sub-tenant to rent the unit. The Tenant testified that she entered into a one-year fixed term tenancy agreement for the sub-tenant to pay her rent of \$1,650.00 each month. The Tenant submitted documents indicating she renewed the fixed term lease with the sub-tenant until April 30, 2019. The Tenant testified that the sub-tenant's rental unit is located in the basement suite of the residential property and that the Landlord Mr. C.Y. lives in the unit above the sub-tenant.

The Tenant testified that near the end of the 3-year fixed term tenancy that was set to expire on March 31, 2019, the Landlord, Ms. L.H.L. approached her and entered into a new fixed term tenancy agreement for a one-year period starting April 1, 2019 and

ending on March 31, 2020. The Tenant testified that she paid the Landlord, Ms. L.H.L. a bulk payment of \$10,000.00 for the duration of the fixed term tenancy.

The Tenant testified that the Landlord Mr. C.Y. interfered with her tenancy agreement by approaching her sub-tenant and having her sub-tenant enter into a new tenancy agreement directly with the Landlord.

The Tenant testified that she never ended the sub-tenant's tenancy and the sub-tenant never ended the tenancy with any written notice. The Tenant testified that she is willing to consider her tenancy with the Landlord as having ended and consider the tenancy with the sub-tenant as having ended if the Landlord pays her the compensation she is claiming.

The Tenants application and monetary order worksheet indicates the Tenant is seeking \$13,200.00 for the loss of 8 months of rental income from August 1, 2019 to March 31, 2020. The Tenant is also seeking the return of a security deposit in the amount of \$550.00, and to recover the cost of the \$100.00 filing fee.

The Tenant provided the following documents in support of her application:

- Copy of the original tenancy agreement between the Landlord and Tenant dated March 23, 2016 for three-year term ending March 31, 2019. Rent is \$1,100.00 per month.
- Rent receipt dated March 23, 2016 for \$10,800 for payment of rent (at \$900 per month) for the period of April 1, 2016 to March 31, 2017. Payment made from the Tenant to Mr. Y.C. and Ms. LHL. The receipt is signed by Ms. LHL
- Receipt dated March 28, 2016 for \$13,000.00 payment of rent (at \$900 per month) for the period of April 1, 2017 to July 31, 2018. The receipt indicates the Landlord, Ms. LHL. on behalf of Mr. Y.C. received \$6,000.00 from the Tenant on March 28, 2016 and \$7,000.00 from the Tenant on March 29, 2016. The receipt is signed by Ms. LHL.
- Receipt dated April 27, 2016 for \$5,000.00 payment of rent (at \$625 per month) for the period of August 1, 2018 to March 31, 2019. The receipt indicates the Landlord, Ms. LHL. on behalf of Mr. Y.C. received \$5,000.00 from the Tenant on April 27, 2016. The receipt is signed by Ms. LHL.
- Receipt dated February 10, 2017 for \$10,000.00 payment of rent for the period of April 1, 2019 to March 31, 2020. The receipt indicates the Landlord, Ms. LHL. on behalf of Mr. Y.C. received \$10,000.00 from the Tenant on February 10, 2017. The receipt is signed by Ms. LHL

- Copy of tenancy agreement between the Tenant and her sub-tenant starting May 1, 2017 and ending April 30, 2018. Rent is \$1,650.00 per month.
- Copy of tenancy agreement between the Tenant and her sub-tenant starting May 1, 2018 and ending April 30, 2019. Rent is \$1,700.00 per month.
- Copies of e-transfer rent payments made by the sub-tenant to the Tenant for the time period of August 2018 to July 2019.
- Copy of a letter dated August 2, 2019 from the sub-tenant stating that the Landlord Mr. C.Y. asked her to pay him rent directly starting August 2019 and continuing.
- Copy of a tenancy agreement between the Landlord, Ms. LHL. and the Tenant for the tenancy to start on April 1, 2019 and continue until March 31, 2020. Rent is shown as \$833.33 per month.

The Tenant testified that the Landlord, Mr. Y.C. provided the phone number of Ms. LHL as the contact number for tenancy matters. The Tenant provided a copy of the document containing the phone number which also contains a statement or receipt of a security deposit of \$550.00 and the first months' rent of \$1,100.00.

At the first hearing, in response to the Tenant's claim, the Landlord's legal counsel, Mr. G.T. submitted that any variation of the tenancy agreement needs to involve the same parties. Counsel submitted that the Tenant went behind the Landlords back and kept him out of the know. Counsel submitted that the original tenancy agreement does not contain the name of Ms. LHL. Counsel submitted that the second fixed term tenancy agreement is not valid.

Mr. G.T. submitted that none of the receipts have the Landlord's name on them and there is no evidence that Ms. LHL. is the Landlord.

The Landlord testified with the assistance of an interpreter.

The Landlord testified that the residential property was purchased by his parents in March 2016. He testified that the original tenancy agreement was signed in the presence of himself, Ms. LHL, and the Tenant. The Landlord submitted that only his name is on the original tenancy agreement.

The Landlord provided testimony confirming that a notice to end tenancy was never received from the Tenant and that a notice to end tenancy was never issued to the Tenant by the Landlord. The Landlord confirmed that he asked the sub-tenant to pay monthly rent directly to him. He testified that he entered into a tenancy agreement with

the sub-tenant on a month to month basis in September 2019. Rent is \$1,200.00 per month. The Landlord testified that he received rent of \$3,600.00 for September 2019; October 2019; and November 2019.

Landlord's Application

At the start of the reconvened hearing, the Landlord's counsel, Mr. G.T. did not attend. The Landlord was assisted by legal counsel, Ms. N.B.

The Landlord is seeking to recover unpaid rent for the period starting March 2019 until the end of July 2019. The Landlord clarified his claim as follows:

Month	Rent claimed
March 2019	\$1,100.00
April 2019	\$1,650.00
May 2019	\$1,650.00
June 2019	\$1,650.00
July 2019	\$1,650.00
total	\$7,700.00

The Landlord testified that when the 3-year fixed term tenancy ended on March 31, 2019 the tenancy continued thereafter on a month to month basis at \$1,100.00 per month.

The Landlord testified that he entered into a tenancy agreement with the Tenant's sub-tenant on a month to month basis in September 2019. The sub-tenant pays him \$1,200.00 each month under their tenancy agreement; however, he clarified that he is seeking compensation for the same amount of monthly rent that the Tenant was receiving from her sub-tenant.

The Landlord testified that his parents are the registered owners of the property. He submitted that he has power of attorney from his parents. The Landlord submitted that the Tenant should not have entered into a tenancy agreement with Ms. LHL. The Landlord submitted that he did not authorize the Tenant to deal with Ms. LHL. The Landlord testified that he was not aware that the Tenant had paid a lump sum rent payment upfront to Ms. LHL.

The Landlord submitted that he checks his mother's account each month and the Landlord became concerned when he noticed March 2019 rent was not in the account.

The Landlord testified that he also got police involved when Ms. LHL fraudulently sold his mother's car. The Landlord testified that he has lived with Ms. LHL. for six or seven years. The Landlord testified that he has ended his relationship with Ms. LHL due to her gambling problems. He testified that Ms. LHL has disappeared completely, and he does not know where she is.

The Landlord submitted that he has not received any rent payments for March, April, May, June, or July 2019. The Landlord submitted that the Tenant paid Ms. L.H.L. a lump sum of \$10,000.00 to cover the entire period of the one-year lease and Ms. L.H.L. has kept all of the rent money.

The owner of the residential property, Ms. J.Y testified that she is the registered owner of the property. She testified that she authorized her son to rent out the basement suite. She testified that she knows Ms. LHL but did not give permission to Ms. LHL. to rent out the unit.

The Landlords legal counsel questioned whether or not the Act applies to this dispute because the rental unit was rented for business purposes. Counsel submitted that the Act applies to living accommodation, not business purposes and therefore there is no jurisdiction.

The Landlords legal counsel submitted that the second tenancy agreement was entered into without authority. She submitted that the Tenant mistakenly believed that Ms. LHL was the Landlord's agent. She submitted that the second tenancy agreement does not contain permission for the Tenant to sublet the rental unit. She submitted that rent is listed as \$833.33 per month and the Tenant's claim should not be \$13,850.00.

In reply, the Tenant testified that she paid the rent in the same manner for both tenancy agreements and that the terms of the addendum carry over to the new agreement. The Tenant testified that the rent is only \$833.33 per month because the Landlord wanted another lump sum payment of \$10,000.00 for the rent.

Analysis

The Act defines a Landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or*
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c) a person, other than a tenant occupying the rental unit, who*
 - (i) is entitled to possession of the rental unit, and*
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

Section 7 of the Act provides,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 44 (3) of the Act provides that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Based on the evidence and testimony before me, and on a balance of probabilities, I have made the following findings:

Jurisdiction

I have considered the submission from the Landlord's counsel that the Act may not apply to the tenancy agreement because the Tenant's intention was only to sublet the rental unit. Section 2 of the Act provides that the Act applies to tenancy agreements, rental units and other residential property. A sub-tenant's contractual rights and obligations are as set out in the sublease tenancy agreement. There is no requirement under the Act that prohibits a Tenant from subletting a rental unit at a higher monthly rent than required under the original tenancy agreement. I find that the Tenant rented the unit out to the sub-tenant to occupy the unit as a residential unit.

I find that the Act applies to the tenancy agreement between the Landlord and Tenant and also applies to the sublease agreement between the Tenant and the sub-tenant.

Tenant's Application

I have considered the testimony and evidence before me on the issue of whether or not Ms. LHL. is a Landlord under the Act. The definition of Landlord under the Act provides that a Landlord includes the owner of the rental unit, the owner's agent, or another person who, on behalf of the landlord, permits occupation of the rental unit or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

I accept the testimony from the owner that Mr. Y.C. is authorized by the owner of the residential property to rent out the basement suite. I find that Mr. Y.C. is a Landlord.

The Tenant's testimony that she was provided with Ms. LHL's phone number and that she made appointments and paid the rent owing under the original tenancy agreement to Ms. LHL and that Ms. LHL was acting as an agent of the Landlord is internally consistent with the documentary evidence provided by the Tenant.

I find that the four rent receipts contain the name of Mr. Y.C. and are all signed by Ms. LHL. I accept the validity of these documents and I find that these documents weigh heavily in favor of the Tenant's testimony that Ms. LHL was acting as an agent of the Landlord.

The Landlord submits that Ms. LHL was not acting as his agent and I find that the original three-year tenancy agreement is signed by Mr. Y.C. The second tenancy agreement contains the signature of Ms. LHL. Mr. Y.C. submits that the second tenancy agreement is not valid because Ms. LHL is not his agent. However, I have reviewed both tenancy agreements and I find that it is more likely than not that they were written by the same person. I find that the hand writing on the two tenancy agreements is identical. If Mr. Y.C. had no knowledge of the second tenancy agreement, then the first tenancy agreement that bears his signature could not have been prepared by Mr. Y.C. It is reasonable for me to find that the tenancy agreements were authored by Ms. LHL.

I find the terms of the tenancy agreements regarding bulk payment of rent up front are consistent for both tenancy agreements and supported by the rent receipts. The Tenant made repeated bulk payments of rent to the Landlord. Mr. Y.C. and Ms. LHL lived together, and the original tenancy agreement was signed in the presence of Mr. Y.C. and Ms. LHL. I find that there was no obvious reason for the Tenant to be concerned when the tenancy was extended by Ms. LHL and a bulk rent payment was negotiated

and paid. There is no evidence before me that Mr. Y.C. provide the Tenant with notification, at any time prior to the signing of the second tenancy agreement, that Ms. LHL was no longer authorized to accept the payment of rent or act as an agent for him.

On a balance of probabilities, I find that Ms. LHL meets the definition of Landlord under the Act because she is a person who, on behalf of Mr. Y.C. exercised powers and performed duties under the Act, and the tenancy agreement. I find that Ms. LHL authored the tenancy agreements, receipts, and was the contact person for the Landlord with respect to tenancy matters.

With respect to the tenancy agreement between the Landlord and Tenant, I find that the parties renewed the tenancy for an additional year from April 1, 2019 until March 31, 2020. I find that the Tenant paid the Landlord a bulk payment of \$10,000.00 up front, which amounts to \$833.33 per month. I note that even if the fixed term tenancy had not been formally renewed, pursuant to section 44 (3) of the Act it would have continued on a month to month basis.

I find that the tenancy had not ended by notice by either party in accordance with section 44 of the Act. The rent was paid up to March 31, 2020. Since the tenancy was an ongoing tenancy, I find that the Landlord had no legal right to enter into a new tenancy agreement with the sub-tenant starting September 2019 for \$1200.00 each month.

I find that the Landlord breached the Act by treating the tenancy agreement with the Tenant as having ended. I find that the Landlord is responsible to refund the monthly rent of \$833.33 to the Tenant from August 2019 to March 31, 2020. The Landlord owes the Tenant eight months of rent in the amount of \$6,666.64.

I am not awarding the Tenant compensation for the difference in rent that was owing under the tenancy agreement and the amount the Tenant was receiving from the sub-tenant. There is no evidence before me that the sublease was renewed prior to or after it ended on April 30, 2019. There is insufficient evidence from the Tenant regarding a new tenancy agreement or the terms and conditions of any such agreement. A sublease does not automatically continue on a month to month basis when it ends and section 44 (1)(g) of the Act provides that a tenancy ends if the tenancy agreement is a sublease agreement.

End of Tenancy

The Tenant proposed that the tenancy between her and the Landlord and between her and the subtenant could be ended if she receives the compensation she is seeking. Since I have found that the Landlord breached the Act by treating the agreement with the Tenant as having ended and by entering into a tenancy agreement with the subtenant, I find that the tenancy between the Landlord and Tenant has ended effective August 1, 2019. Accordingly, the tenancy between the sub-Tenant and the Tenant ended on August 1, 2019 and the subtenant has been paying rent directly to the Landlord since August 2, 2019.

Landlords Application

The Landlord is seeking to recover unpaid rent starting March 2019 until the end of July 2019.

I find that the Landlord received the rent that was due under the tenancy agreement for the period of time being claimed. The original tenancy agreement that Mr. Y.C. does not dispute covered the period up to March 31, 2019. I find that the Tenant paid the rent by making bulk payments to the Landlord which included March 31, 2019. The Landlord's claim for March 2019 rent is dismissed.

I have also found that the Tenant paid the Landlord a bulk rent payment of \$10,000.00 to cover the rent from April 1, 2019 to March 31, 2020. The Landlord did not suffer a loss of rent for the period of time that he is claiming, and he has received rent from the sub-tenant from August 2019 onwards.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant's claim was, at least partially successful, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I find that the Tenant is entitled to a monetary compensation from the Landlord in the amount of \$6,766.64. I grant the Tenant a monetary order in the amount of \$6,766.64. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

With respect to the security deposit of \$550.00 that is being held by the Landlord, I order the Landlord to return it to the Tenant within 15 days or make claim to it by applying for dispute resolution within 15 days of receiving this decision. If the Landlord

fails to return the deposit or apply for it within 15 days, the tenant may apply for dispute resolution seeking double the amount of the deposit in accordance with section 38 (6) of the Act.

Conclusion

I find that the Landlord's partner/ girlfriend, Ms. LHL. acted as an agent for the Landlord and is considered a Landlord under the Act. Ms. LHL entered into a tenancy agreement with the Tenant and accepted a bulk payment of \$10,0000.00 rent for April 1, 2019 to March 31, 2020.

The Landlord breached the tenancy agreement, and the Act, by entering into a new tenancy agreement for the rental unit that was already rented under an earlier agreement to the original Tenant. The Landlord is ordered to repay the balance of \$6,666.64 of rent to the Tenant.

I grant the Tenant a monetary order in the amount of \$6,766.64 for the balance of rent and the recovery of the filing fee.

The Landlord's claim for compensation due to unpaid rent is unsuccessful and 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: February 18, 2020

Residential Tenancy Branch