



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC; LRE; MNDCT; MNRL -S; MNDCL -S; FFL

Introduction

This hearing dealt with cross applications. The tenant applied for orders for compliance, orders to suspend or set conditions on the landlord's restricted right to enter the rental unit; and, compensation for damages or loss under the Act, regulations or tenancy agreement. The landlords applied for recovery of unpaid rent, loss of rent, unpaid utilities; and, authorization to retain the security deposit. Both parties appeared or were represented 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 the each other.

The tenant submitted that she sent her proceeding package and evidence to the landlords via registered mail sent in a single envelope on January 11, 2020 but that the registered mail was returned due to an incorrect address. The tenant took the position that the landlords were avoiding service; however, I noted that the registered mail receipt printed out by the postal service reflected a transposition error in the street address. The tenant stated the post office must have made the error. I was satisfied the tenant had attempted to serve the landlords within the time limit for doing so but that the landlords had not attempted to avoid service. In any event, the tenant re-sent the package in mid-February 2020 and the landlords received it on February 19, 2020. The tenant also sent additional evidence pertaining to moving costs which the landlords also received in February 2020. The landlords prepared a response to the tenant's claims and sent it to the tenant via registered mail on February 26, 2020. The tenant stated she only recently received the landlord's responses since she had been in the hospital until recently. I found the landlords had not unduly delayed their response since they had only received the tenant's claims the week prior. I asked the tenant is she wanted

an adjournment to have sufficient time to review the landlords' responses, but the tenant stated she was not seeking an adjournment.

As for the landlords' claims against the tenant, the landlords sent their hearing documents to the tenant via registered mail on January 24, 2020. The tenant confirmed receipt of this package and confirmed she had sufficient time to review the material.

I explained the hearing process to the parties and permitted the parties the opportunity to ask questions about the process.

While I was hearing the tenant present her case, it was clear that she had not come organized or prepared to provide a reasonably detailed timeline or sequence of events and I noted that it had not been set out in her written submission. The tenant acknowledged that she was not feeling overly clear since she had been hospitalized recently. I found the tenant's vague and lack of details during the hearing and failure to provide these particulars in her written submissions to be insufficient and prejudicial to expect the landlords to respond to the matter that had not been sufficiently set out. I informed the parties that I was not willing to further consider the tenant's claims at this time and that I would dismiss her claims for loss of use and quiet enjoyment and moving costs with leave to reapply. The parties did not object.

As for the tenant's request for orders for compliance and to suspend the landlord's restricted right to enter the rental unit, I determined the tenancy has ended so these remedies were moot and not considered.

I proceeded to consider the landlords' claims against the tenant as their claim was more straightforward and based on the tenancy agreement. During the remainder of the hearing, I was able to gather sufficient information from both parties in order to make a determination with respect to the landlords' claims.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover the amounts claimed against the tenant for unpaid and/or loss of rent, and utilities?
2. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The parties entered into a tenancy agreement set to commence on December 1, 2019 for a fixed term of one year. The landlords collected a security deposit of \$825.00 and the tenant was required to pay rent of \$1,650.00 on the first day of every month.

The rental unit was described as a basement suite and the landlords reside in the living unit above.

The tenant complained to the landlords about electrical, heat and noise issues and in late December 2019 the landlord communicated to the tenant that she may end the tenancy early. On January 1, 2020 the tenant posted a notice to end tenancy on the landlord's door with an effective date of January 15, 2020. The tenant did not pay rent for January 2020 and requested the landlords refund her December 2019 rent to her. The landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on January 2, 2020. The tenant reported the basement suite to the by-law office with the City. The tenant returned possession to the landlords on January 15, 2020 and posted her forwarding address on the landlord's door on January 15, 2020.

The landlords did not attempt to re-rent the unit. The landlords explained that after the City's by-law officer inspected the property they were informed they were not permitted to rent it out unless they constructed a fire barrier between the two living units. The landlords chose to decommission the rental unit and obtained a building permit to do so on January 17, 2020.

The landlords claimed for unpaid rent for January 2020 and loss of rent for February 2020. The landlords also requested compensation for utilities in the amount of \$170.12 for the period of December 1, 2019 through January 15, 2020. The landlord testified that the tenant was required to pay them 40% of the utilities for the property; however, the tenancy agreement does not specify that. The landlord conceded that she erred in failing to record the utility obligation in the tenancy agreement.

Analysis

Where a tenant fails to pay rent that is due under the tenancy agreement, the landlord may pursue the tenant for the unpaid and/or loss of rent. As with any monetary claim for damages or loss made under the Act, the landlord must be prepared to prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The tenancy agreement requires the tenant to pay rent of \$1,650.00 on the first day of every month and I find the tenant was obligated to pay the rent on January 1, 2020 and she failed to do so. Therefore, I accept the tenant violated the tenancy agreement and the Act in withholding rent for January 2020.

The tenant continued to occupy the rental unit until January 15, 2020 and I find the tenant obligated to compensate the landlords for the period of January 1 – 15, 2020, or \$825.00. I authorize the landlords to retain the tenant's security deposit in satisfaction of the rent I have awarded the landlords.

I do not award the landlords any unpaid or loss of rent beyond January 15, 2020 because they chose to decommission the rental unit due to its illegality. As such, I find the loss of rent after January 15, 2020 is due to the illegality of the rental unit and their decision not to take steps to legalize it and mitigate loss of rent.

As for the landlord's claim for utilities, I find their claim is not sufficiently supported by the terms reflected in the tenancy agreement. While the tenancy agreement indicates that electricity, heat, gas is not included in the monthly rent, there is not requirement that the tenant pay the landlords 40% of their utility bills. Therefore, I find the landlords did not establish an entitlement to recover 40% of their utility bills and I dismiss that portion of their claim.

I award the landlords recovery of the \$100.00 filing fee they paid for their application as they were required to file an Application for Dispute Resolution to make a claim against the security deposit since the tenant had provided her forwarding address to them; and, having found the landlords claim for unpaid rent had merit. The landlords are provided

a Monetary Order in the amount of \$100.00 to serve upon the tenant if they chose to enforce payment.

Conclusion

The landlords are authorized to retain the tenant's security deposit in satisfaction of the unpaid rent. The landlords are provided a Monetary Order in the amount of \$100.00 to recover the filing fee they paid for their Application for Dispute Resolution that they may serve and enforce against the tenant.

The tenant's claims against the landlords were not sufficiently set out and were dismissed with 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: March 06, 2020

Residential Tenancy Branch