Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S, MNDL – S, MNDCL -S, FFL

Introduction

This hearing was scheduled to deal with a landlord's monetary claim for unpaid rent, loss of rent, and damage to the rental unit; and, authorization to retain the tenants' security deposit and pet damage 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.

Preliminary and Procedural Matters

1. Naming of landlords

Two landlords were named in filing this Application for Dispute Resolution; however, I determined it appropriate to strike one of the named landlords, referred to by initials OC, from the style of cause for reasons provided below.

I heard that OC is the owner of the property and he rented the property to the applicant JH. JH testified that she has a tenancy for the subject property and under her tenancy agreement with OC she may occupy the rental unit herself or sublet it. JH sublet the property to the named tenants under a separate sublease agreement which was provided as evidence.

Where a property is subleased, the original tenant remains the tenant to the owner/landlord and becomes the landlord to the sub-tenants. The owner/landlord and the sub-tenants do not have a tenancy agreement with each other. Any disputes with the sub-tenants concerning the sub-tenancy agreement may be brought against the sub-tenants by JH, or vice-versa, and JH has obligations to OC. As such, it is

inappropriate for the owner/landlord to make a claim against the sub-tenants and OC was excluded as a named party to this dispute.

For the remainder of this decision, reference to the landlord means JH.

2. Serving hearing documents

The landlord filed her Application for Dispute Resolution on November 5, 2019 and the proceeding package was generated on November 19, 2019. The landlord served the proceeding package to each of the tenants via registered mail within three days. A Monetary Order worksheet did not accompany the Application for Dispute Resolution. Nor, did any evidence. The tenants confirmed receipt of this package.

The landlord prepared an evidence package and a Monetary Order Worksheet and sent it to the tenants via registered mail on March 12 or March 13, 2020 and the tenants received this package on March 17 or 18, 2020.

I noted that the landlord's monetary claim that was made by way of the Application for Dispute Resolution on November 5, 2019 was for a total of $10,600.00 which was the sum of: $3,500.00 for unpaid rent for October 2019; $3,500.00 for loss of rent for November 2019 due to the damage and condition the property was left by the tenants in October 2019; and, $3,500.00 for damage to the rental unit; plus, recovery of the $100.00 filing fee.

In the package sent in March 2019 the first page of the Monetary Order worksheet indicates the landlord was making a monetary claim for unpaid rent, costs to repair damage, cleaning costs and other losses or damage to furniture and property. On the second and third page is a listing of expenditures that total $4987.54 that appear related to cleaning and damage to property or loss of property but no specific amount was included in the calculation for unpaid or loss of rent.

The tenants provided a response and rebuttal evidence to the landlord via email on March 25, 2019. The landlord questioned the tenants' use of email to serve her since she sent them registered mail. The tenants responded that the law regarding service of documents changed on March 25, 2019 due to the COVID-19 crisis. I informed the parties that the law was changed effective March 30, 2019 although the government had made its intentions to change the law public on March 25, 2019. I asked the landlord whether she would be willing to be deemed served and proceed as scheduled or adjourn the hearing so that she may be served in another manner. The landlord

stated that she was willing to accept service by email and proceed. Accordingly, I deemed the landlord sufficiently served pursuant to my authority under section 71 of the Act.

The landlord acknowledged she did not prepare and serve an "Amendment to an Application for Dispute Resolution" in serving her materials in March 2020. I asked the landlord to provide the total of her claim given the varying amounts and claims indicated on her Application for Dispute Resolution and the Monetary Order worksheet. The landlord appeared to have some difficulty doing so and she acknowledged she struggled with completing the paperwork for this claim. The tenants submitted that they were uncertain as to how much the landlord was pursuing them for given the varying amounts on the documents serve upon them.

I canvassed both parties in an effort to resolve at least one part of the claim that appeared sufficiently set out, which was the claim for unpaid rent for October 2019, and disposition of the security deposit and pet damage deposit. All parties indicated they were prepared and willing to proceed to deal with that portion of the landlord's claim.

I informed the parties that I was prepared to resolve the claim for unpaid rent for October 2019 claim and in doing so that would resolve the issue of disposition of the deposits; and, that I would dismiss the landlord's claims for other damages and loss with leave to reapply. The parties did not object to this approach.

I proceeded to explain the hearing process to the parties and permitted the parties to ask questions about the process.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent for October 2019 in the amount of $3,500.00?
2. Is the landlord authorized to retain the tenants' security and pet damage deposit?

Background and Evidence

The sub-tenancy agreement started on October 20, 2018 and the landlord collected a security deposit and pet damage deposit totalling $3,500.00. The monthly rent was set at $3,500.00 payable on the first day of every month. The tenants paid rent for the period of October 20 – 31, 2018 in the amount of $1,400.00 and from November 1, 2018 onwards they were required to pay $3,500.00 on the first day of every month.

The term of the tenancy agreement is, as indicated in the tenancy agreement, a "periodic" tenancy that commenced on October 20, 2018 and continuing on a "year to year" basis until such time either party terminates the agreement. Both parties provided consistent statements that they interpreted this term to mean the tenancy was for a fixed term of at least one year even though the tenancy was described as being "periodic" which only requires a tenant to give one month of notice to end the tenancy. The tenancy agreement does not indicate the tenancy is for a fixed length of time or what would happen at the end of the fixed term. To further compound the uncertainty as to the term of the tenancy and how to end the tenancy, the tenancy agreement does not contain the "standard terms" that are required to be included as per section 13 of the Act, in particular the standard term that provides for how a tenant may end the tenancy.

I informed the parties that the tenancy agreement was non-compliant with the requirements of the Act and I asked both parties what their understanding was as far as how the tenants may give notice to the tenancy. Both parties provided consistent statements that the tenants were expected to give notice to end the tenancy in the month preceding the last month of tenancy; however, both parties appeared uncertain as to which day in the month the notice would be effective and unfamiliar with the requirements of ending a periodic tenancy in accordance with the requirements of the Act. Neither party took issue with the notice being sent by email.

Both parties stated the tenants sent an email to the landlord informing the landlord they were ending the tenancy "this month" although the parties were in dispute as to when that email was sent/received. The landlord testified it was received on October 1, 2018. The tenant testified the landlord received it by September 30, 2019 but also stated that reference to "this month" meant the month of October 2019 and they did not specify a specific date for ending the tenancy in their email.

The tenants then withheld rent that was due on October 1, 2018. The landlord posted a 10 Day Notice to End tenancy for Unpaid Rent on the door of the rental unit with an effective date of October 18, 2019. Several electronic communications went back and forth with the tenants eventually informing the landlord on October 14, 2019 that they would be vacating the rental unit on October 20, 2019. The tenants also filed to dispute the 10 Day Notice on October 14, 2019 and a hearing was scheduled for December 6, 2019; however, the tenants proceeded to vacate the unit on October 20, 2019.

In the tenant's written materials, it appeared that the tenants intended to argue that the tenancy was set to end on October 20, 2019 pursuant to the tenancy agreement;

however, they did not make such arguments during the hearing. Rather, during the hearing, the tenants conceded they were required to pay rent for October 1, 2019 in the amount of $3,500.00 but that they withheld the money because they needed to come up with rent and deposits for their new rental accommodation and because they did not think the landlord would return their deposits to them. The tenants stated they were willing allow the landlord to retain their deposits for the unpaid rent.

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 limited and specific circumstances when a tenancy may legally withhold or make deductions from rent. The tenant's reasons for withholding rent do not constitute a legal basis under the Act for withholding rent. Therefore, I find the tenants were obligated to pay the monthly rent for October 2019.

The tenancy agreement specifies that the monthly rent is $3,500.00 and is payable on the first day of every month. I find the tenants bound by that term as it is sufficiently clear and enforceable. It also appears the tenants accepted that given their concession during the hearing. Therefore, I award the landlord unpaid rent in the amount of $3,500.00 for the month of October 2019.

I further award the landlord recovery of the $100.00 filing fee paid for this Application for Dispute Resolution.

In light of the above, the landlord is awarded a total of $3,600.00 and is authorized to retain the tenants' security deposit and pet damage deposit in partial satisfaction of these awards. The landlord is provided a Monetary Order for the balance of $100.00 to serve and enforce upon the tenants.

Conclusion

The landlord is awarded $3,600.00 for unpaid rent for October 2019 and recovery of the filing fee. The landlord is authorized to retain the tenants' security deposit and pet damage deposit in partial satisfaction of this sum and is provided a Monetary Order for the balance of $100.00 to serve and enforce upon the tenants.

The landlord's claims for other damages and loss have been 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: April 02, 2020

Residential Tenancy Branch