Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 27, 2020 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 02, 2020 (the "Notice");
- To recover unpaid rent;
- For compensation for monetary loss or other money owed being the filing fee;
- To keep the security and/or pet damage deposits; and
- For reimbursement for the filing fee.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord named M.A. and D.C. as landlords on the Application. The Landlord advised that these individuals are the upstairs tenants and not landlords. Therefore, I removed these individuals from the Application which is reflected in the style of cause.

I confirmed the Application with the Landlord at the outset. The Landlord withdrew the request for unpaid rent. The Landlord raised an issue about hydro. I asked the Landlord to point out where in the Application it raises an issue about hydro. The Landlord advised that this was not included in the Application. I told the Landlord I would not address the hydro issue given it was not included in the Application as the Tenants would have had no notice that this issue was being addressed at the hearing today.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. Tenant D.R. confirmed receipt of the hearing package and Landlord's evidence.

The Landlord testified that she did not receive the Tenants' evidence. At first, Tenant D.R. testified that the evidence was served on the Landlord by email. Tenant D.R. could not recall when the email or emails were sent. When questioned about this further, Tenant D.R. acknowledged she did not know if she sent the evidence to the Landlord.

I am not satisfied the Tenants served their evidence on the Landlord given Tenant D.R. could not provide the date the email was sent, acknowledged she did not know if she sent the evidence and could not point to evidence submitted showing the evidence was sent to the Landlord by email. However, the parties came to a settlement agreement and therefore I do not find it necessary to address this issue further.

A written tenancy agreement was submitted and the parties agreed it is accurate. Both parties agreed rent is currently $1,230.00 per month due on the first day of each month.

The Landlord had mentioned at the outset of the hearing that the tenancy could continue under certain conditions. Given this, I raised the possibility of settlement pursuant to section 63(1) of the *Residential Tenancy Act* (the "*Act*") which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear the matter and make a final and binding decision. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear and decide the matter. If they did come to an agreement, I would write out the agreement in my written decision. The written decision would become a final and legally binding agreement and the parties could not change their mind about it later.

The parties did not have questions about the above and agreed to discuss settlement.

During the settlement discussions, the Landlord asked to include a term about the Tenants paying hydro to the upstairs tenants on time per the tenancy agreement. I confirmed with the Landlord that the rental unit address is a house with an upper suite and lower suite. The Landlord confirmed that the hydro is in the name of the upper

tenants and the upper tenants collect money from the Tenants' for their portion of the hydro.

Policy Guideline 1 states at page nine:

> SHARED UTILITY SERVICE
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> 1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
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> 2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

Pursuant to Policy Guideline 1, I told the Landlord during the hearing that I would not include a term in the settlement agreement about the Tenants paying the upper tenants because in my view the arrangement is contrary to Policy Guideline 1 and what is permitted under the *Act*. I did not address this further with the parties because it was not the issue before me. I told the Landlord it was open to them to continue with a settlement agreement that does not address hydro or to not continue with a settlement agreement. The Landlord chose to continue with a settlement agreement without a term about hydro.

During the settlement discussions, the parties could not agree at first about the filing fee. I explained to the Tenants that if the parties could not agree we would end the settlement discussions and I would hear and decide the matter. I outlined for the Tenants the possible outcomes of the Application as it relates to an Order of Possession based on the Notice. I made it clear to the parties that I did not know what the outcome would be as I had not heard from the parties about the Notice. I also made it clear to the parties that it was their choice whether they agreed to the terms of the settlement agreement and that it was open to them to not agree.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I confirmed all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure.

Settlement Agreement

The Landlord and Tenants agree as follows:

1. The Notice is cancelled.

2. The tenancy will continue under the following condition:

    a. The Tenants will pay rent on time being by the first day of each month as set out in the written tenancy agreement.

3. The Tenants will pay the Landlord $100.00 as reimbursement for the filing fee.

4. The Tenants are reminded of the obligation set out in section 32(2) of the *Act* which states:

    32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

5. All rights and obligations of the parties under the tenancy agreement and *Act* will continue until the tenancy is ended in accordance with the *Act*.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlord is issued a Monetary Order for $100.00. If the Tenants do not pay the Landlord $100.00 in accordance with the settlement agreement, this Order must be served on the Tenants. If the Tenants fail to comply with the Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 21, 2020

Residential Tenancy Branch