Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On January 21, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Y.J. attended the hearing as an advocate for the Tenant and the Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

Y.J. advised that the Landlord was served the Notice of Hearing and evidence package by registered mail on or around January 21, 2020 and the Landlord confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that he served his evidence to the Tenant on May 29, 2020 by registered mail. Y.J. confirmed that he received this package this week, and he stated that he was prepared to respond to it. As a result, this evidence will be accepted and considered when rendering this Decision.

In the details of dispute in the Tenant's Application, he noted that he was also seeking a return of his security deposit. Y.J. confirmed that the Tenant did not provide a forwarding address in writing to the Landlord. Pursuant to Section 38 of the Act, if the Tenant wants the security deposit returned, he must provide a forwarding address in writing to the Landlord first. The undisputed evidence is that the Tenant had not provided the Landlord with his forwarding address in writing until making this Application and sending this package to the Landlord on or around January 21, 2020. As such, I find the Tenant's Application on this issue to be premature.
Y.J. confirmed that the address that was used on the Application is a valid address for service for the Tenant. Therefore, the Landlord is put on notice that he now has the Tenant's forwarding address and he must deal with the security deposit pursuant to Section 38 of the *Act*. The Landlord is deemed to have received the Decision 5 days

after the date it was written and will have 15 days from that date to deal with the deposit.

If the Landlord does not deal with the security deposit within 15 days of being deemed to have received the Decision, the Tenant can then re-apply for double the deposit, pursuant to Section 38 of the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 15, 2019 for a fixed length of time ending on April 14, 2020. Rent was established at $1,025.00 per month and was due on the fifteenth day of each month. All parties agreed that the Tenant paid the full year's worth of rent in advance. A security deposit of $512.50 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

Y.J. advised that the Tenant was seeking compensation in the amount of **$4,200.00** for rent that was paid from January 2020 onwards that the Landlord was not entitled to collect. Y.J. stated that because the Tenant was offered an opportunity overseas, he sent the Landlord an email on April 10, 2019 advising him of this. Y.J. stated that he had conversations with the property manager, who told him that another tenant would be found to take over the lease. As one was found, the Tenant moved out of the rental unit and returned the keys on May 24, 2019. This new tenant was supposed to move in as of June 1, 2019 but he did not until July 2019. He stated that this new tenant paid rent to the property manager, and Y.J. would then in turn collect this money from the property manager. This was done for the months of July to December 2019; however, the property manager advised Y.J. on December 20, 2019 that the tenant would be moving out after December 2019.

After he found out that the tenant would be moving out past December 2019, he stated that he did not do anything with respect to this tenancy. He attempted to contact the Landlord, but he did not receive a response. He stated that he had nothing in writing with the Landlord regarding this new arrangement, but he had a verbal agreement with the property manager that the new tenant's rent would be paid to the Tenant. It is his position that while he did not provide a written notice to end tenancy that complies with

Section 52 of the *Act*, his email of April 10, 2019 was the Tenant's notice to end the tenancy.

The Landlord referred to the sequence of events that he submitted as documentary evidence and confirmed that he received the April 10, 2019 email, but it is his position that this does not constitute a proper notice to end tenancy, especially given that there is no specific date that the tenancy will end or any indication that the Tenant's intention was to end the tenancy. He stated that the property manager helped the Tenant by finding another tenant to rent the unit. While there was nothing specifically in writing regarding this arrangement, this was effectively a sub-lease agreement and there were discussions between the property manager and Y.J. about this scenario. As he was never given a notice to end the tenancy by the Tenant, the rental unit remained vacant until the end of the fixed term tenancy.

Y.J. confirmed that he had discussions with the property manager about a new tenant occupying the rental unit, and it was his hope that they would sign a new tenancy agreement; however, this did not happen. He stated that it was his hope that he would simply continue to receive rent from the property manager, via the tenant.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

Section 52 of the *Act* outlines what is required in a notice to end tenancy and it states that "In order to be effective, a notice to end a tenancy must be in writing and must (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice…"

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Additionally, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming

compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, I find it important to note that the consistent and undisputed evidence is that the Tenant never provided a notice to end tenancy that complies with the *Act*. While it is Y.J.'s belief that the April 10, 2019 email was the Tenant's notice to end tenancy, not only is it not signed, it also does not note an effective date that the tenancy will end. In my view, I am not satisfied that this would adequately constitute the Tenant's notice to end the tenancy. Furthermore, given that there is no date informing the Landlord of when the tenancy would end, it is not clear to me at what point the Landlord could then start to mitigate any loss and attempt to re-rent the unit.

Based on the evidence and testimony provided, while nothing was established in writing, it appears as if the parties agreed that the rental unit would be sub-let to another tenant to benefit the Tenant's uncertain situation. Excerpts from Policy Guideline # 19 below outline the meaning of a sub-lease.

> When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.
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> The sub-tenant typically pays rent to the original tenant; but even if he or she fails to do so, the original tenant's responsibility to pay rent to the landlord is unaffected and the original tenant can be evicted if rent is not paid. Again, it should be noted that there is no contractual relationship between the original landlord and the sub-tenant. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.

When considering this description, while no written agreements were made between all the parties, I find that this is essentially what the parties had verbally agreed to. As there was no written notice to end the tenancy from the Tenant, I am satisfied that the tenancy was never ended in accordance with the *Act*. Furthermore, as Y.J. and the property manager had discussions with respect to a new tenant renting the unit, and as Y.J. had been collecting rent for the rental unit from a new tenant, this is clearly not a situation where the tenancy was over. I find it more likely than not that all parties had agreed that this would be a sub-lease situation. Had the Tenant not wanted to pay the rent for January 2020 onwards, he would have simply given a notice in writing to end the tenancy. The onus would have then been on the Landlord to mitigate his losses, attempt to re-rent the unit as quickly as possible, and go after the Tenant for any rental loss that was suffered.

Given that I am not satisfied that the Tenant ever gave the Landlord a notice in writing that complied with the *Act*, I am satisfied that the Tenant was responsible for the rent until the tenancy ended. As such, I dismiss the Tenant's Application with respect to compensation for the rent in its entirety.

As the Tenant was not successful in this Application, I find that he is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

Based on above, I dismiss the Tenant's Application with respect to compensation for the rent without leave to reapply.

However, the Tenant's Application with respect to the return of his deposit is dismissed with leave to reapply. The Landlord is put on notice that he now has the Tenant's forwarding address and he must deal with the security deposit pursuant to Section 38 of the *Act*. The Landlord is deemed to have received the Decision 5 days after the date it was written and will have 15 days from that date to deal with the deposit.

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: June 12, 2020

Residential Tenancy Branch