Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on August 11, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord's agent and the Tenants both attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence. Both parties had an opportunity to review each other's evidence and were ready to proceed. I find both parties sufficiently served their evidence to each other for the purposes of this hearing.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary Matter #1 – Jurisdiction and application type

The Tenants explained that while they were tenants, they made several improvements to the property, and were not compensated for the work they did. The Tenants refer to an “off-setting” claim as part of their submission, to compensate them for the work they did.

First, I find it important to note that the Tenants are the respondents in the application. This application was made by the Landlord to recover rental loss. However, the Tenants never filed their own application, such that this is a cross application, whereby their claim for compensation can be heard. The Tenants must file their own application for compensation, should they wish to be compensated for any of the items they are seeking. This hearing is only regarding what rent is due and owed by the Tenants.

Second, I note the Tenants are claiming that they should be given an equitable interest in the property due to the improvements they made, which in turn means that the Act does not apply. However, there is insufficient evidence to support that the Tenants are legally entitled to an equitable interest in the property. There is no evidence to support that the Landlord ever intended to deviate from a Landlord/Tenant relationship, as laid out under the tenancy agreement provided into evidence. The onus is on the person asserting no jurisdiction to prove their case. In this case, I do not find the Tenants have provided sufficient evidence to show that I do not have jurisdiction to hear this matter. I accept jurisdiction.

Preliminary Matter #2 – Frustration

The Tenants have stated that due to COVID-19, their tenancy agreement was frustrated, and as such, they were not required to give proper one-month written notice in order to end the tenancy.

The Tenants explained the following issues to show that their tenancy agreement was frustrated:

> *(a) the Whistler Blackcomb Ski Resort closed down over night;*
> *(b) as a result, 60% of the renting population of Whistler left town before 1 April 2020, including the third tenant;*
> *(c) this caused a monumental shift in the rental housing market in Whistler; and*
> *(d) there was no prospect of replacing one of the Tenants for April 2020, in circumstances where:*

(i) it was an implied term of the tenancy that 3 tenants were needed to afford the cabin;
(ii) the tenants that the cabin had been offered to were seasonal workers who relied on the operation of the Ski Resort; and
(iii) the Property Manager refused to offer market rent rates for April 2020 to unemployed seasonal workers.

I turn to Residential Tenancy Policy Guideline #34 – Frustration. This guideline speaks to the following:

> *A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.*
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> *The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.*

I have considered the Tenants' arguments on this matter. I accept that COVID-19 was both unforeseeable and unprecedented in terms of its impact economically and socially, locally and globally. I accept that it has created significant hardships for a wide variety of individuals. It appears at least one of the Tenants suffered a material loss of employment, which has significant financial implications.

I have carefully considered this matter, as it relates to the tenants, and their tenancy agreement with the Landlord, and I find the situation caused by COVID-19 is largely an economic hardship which impeded their ability to pay, rather than an event which made the contract fulfillment impossible. As parties to the tenancy agreement, all tenants are jointly and severally liable for the payment of rent.

Preliminary Matter #3 – Landlord only filed against 2 of the Tenants

The Tenants stated that the Landlord has made no attempt to contact and file against the 3rd Tenant. The Tenants stated that the other Tenant should be named on this application, as she is equally liable for rent payments.

I have considered the Tenants submissions on this matter. However, there is no requirement for the Landlord to name all Tenants as respondents on this application. The Landlord must serve all named parties. However, it is up to the applicant who they wish to name and to pursue, provided the named party is a tenant under a tenancy agreement. All tenants are jointly and severally liable for the terms of the tenancy agreement, including unpaid rent. Should the amount owing be disproportionately paid by one of the Tenants, they may wish to seek out a court of competent jurisdiction to equalize what is owed, given all parties are jointly and severally liable for any monetary orders based on this tenancy.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

Both parties agree that monthly rent was $3,488.00 at the end of the tenancy, and was due on the first of the month. The parties also agree that the tenancy was on a month-to-month basis at the end of the tenancy and that the Tenants moved out on April 1, 2020.

The Landlord stated that they hold a security deposit of $1,700.00. The Landlord provided a copy of a ledger showing that $1,700.00 was paid on December 10, 2018. The Landlord stated that they collected one half month's rent ($1,700.00) as well as $1,700.00 for the security deposit at the start of the tenancy in December 2018. The Tenants stated that they paid $4,100.00 at the start of the tenancy to the previous property manager, which was comprised of $1,700.00 for the half month's rent in December, plus $2,400.00 for the security deposit. The Tenants provided an email from the previous property manager stating the $4,100.00 was due for rent and deposits.

However, this amount was not itemized or broken down in that email. The Tenants assert that $2,400.00 was for the deposit, but did not present further proof of this breakdown, or that they actually paid the $4,100.00 at the start, rather than the $3,400.00 the Landlord has asserted and shown in their ledger.

The Landlord stated that most of the communication they had with the Tenants was via email, and they received an email from one of the Tenants on March 27, 2020, stating the she would be ending her tenancy and moving out, effective April 1, 2020. At that time she provided her forwarding address. Subsequently, the parties had conversations about what was due and payable, but not agreeable outcome was reached, nor was an agreement made to continue the tenancy. The second tenant also gave written notice, via email, on March 30, 2020. However, that notice is absent a clear effective date.

The Tenants do not dispute that they did not pay April rent. They stated they were under significant hardship and were unable to afford the cost of the house, after losing their jobs.

The Landlord provided a copy of the advertisement they posted on March 27, 2020, the day they got notice from the first tenant. The Landlord stated that they posted the ad for $2,950.00, but ultimately rented it around a month later for $2,650.00. The unit was vacant for April and the Landlord is seeking to recover lost rent due to the Tenants improper Notice.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord is seeking to recover lost rent for the month of April 2020, the period of time that the unit was vacant. The Landlord stated that the Tenants gave improper Notice. More specifically, the Landlord indicated that when they got a written email from the Tenant on March 27, 2020, it only provided formal notice 4 days in advance of the effective date. I turn to section 45 of the Act:

Tenant's notice

> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I note that when one Tenant gives written Notice, the tenancy agreement ends for all parties to that agreement, at the earliest possible date allowable under the Act. In this case, the Landlord received and accepted the Tenant's written Notice on March 27, 2020. The Landlord took issue with the short window of time but proceeded to try and re-rent as fast as they could.

I find the Tenants breached section 45 of the Act by failing to give at least one month written notice to the Landlord. As such, I find the Landlord is entitled to some compensation because they subsequently incurred a loss of revenue for April in the amount of $3,488.00 as a result of not being given adequate time to find replacement tenants for that month. I find the Landlord took sufficient steps to mitigate their loss, find new renters and was able to re-rent the unit for May 1, 2020, despite there being an economic meltdown. I find the Tenants are responsible for April rent in full.

With respect to the amount of the security deposit, I note the Tenants have asserted they paid $4,100.00 at the start of their tenancy for half of December (they moved in mid-month), plus $2,400.00 as a deposit. They provided an email from the previous property manager to show that he requested this amount on December 7, 2018. I note this amount was not broken down further, nor was there any supporting documentation to show this is what was paid to the Landlord when the lease was actually signed a few days later.

In contrast to this, the Landlord stated that only $3,400.00 was paid at the start, half of which was December rent, and the other half was for the deposit. The Landlord provided a copy of their accounting ledger to show these payments and accruals. There is no entry for the amounts asserted by the Tenants.

Having reviewed this matter, I find the Landlord has provided a more detailed and compelling account of what was paid and when. The ledger provides breakdowns of

amounts, and dates, whereas the email the Tenants provided only refers generally to an amount of $4,100.00 and does not elaborate on what that includes. Ultimately, I find I prefer the Landlord's evidence on this matter, and I find it more likely than not that the Tenants only paid $3,400.00 at the start of the tenancy, which included a $1,700.00 security deposit.

Since the Landlord was successful in this application, I award her the recovery of the filing fee ($100.00), pursuant to section 72 of the Act.

Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	**Amount**
April 2020 rent	$3,488.00
PLUS: Filing Fee	$100.00
Subtotal:	$3,588.00
LESS: Security Deposit	$1,700.00
Total Amount	**$1,888.00**

Conclusion

The Landlord is granted a monetary order in the amount of **$1,888.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: August 11, 2020

Residential Tenancy Branch