



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

The landlords apply for a monetary award for unpaid rent and utilities totalling \$17,806.46.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

YH is the only landlord named in the tenancy agreement.

Issue(s) to be Decided

Does the attending tenant have a legal defence that he did not live in the rental unit or that the tenancy should have ended sooner or that the landlords failed to mitigate their loss?

Background and Evidence

The rental unit is a four bedroom home. There is written tenancy agreement signed by the tenant AS and MH, who is not a party to this dispute. The tenancy started on April 22, 2019 for a fixed term to April 30, 2020 and then month-to-month in the absence of any other agreement. The monthly rent was \$7000.00 plus \$150.00 for utilities, due on the first of each month. The landlord received a \$3500.00 security deposit.

The tenant AS never resided in the rental unit, apparently as a result of a dispute with his co-tenant MH.

On May 15, 2020 AS emailed the landlord's agents to say "I am not continuing w the contract since March So there is no reason to stay in the con tract. I will review the numbers you sent."

The landlord took this email to be the tenant's notice to end the tenancy and have considered the tenancy to have ended at the end of the following pay period, June 30, 2020. They thereafter entered into a new tenancy agreement with MH alone, starting July 1, 2020.

There is no dispute but that outstanding rent to the end of June totals \$14,000.00 and that outstanding utilities total \$3806.46.

The tenant AS says the landlord had warning or notice before May that he was not living in the rental unit and, with the rent arrears piling up, she should have ended the tenancy earlier.

AS's co-tenant MH has now paid half the outstanding rent and utilities. The landlord has credited her with one half the security deposit.

Analysis

The obligations of co-tenants are joint and several. Each is legally responsible for the full amount of rent. If one pays more than one's share, he or she can seek contribution from the other. A tenancy agreement is binding on a tenant whether the tenant moves in or not. A co-tenant wishing to end his or her involvement in the tenancy may end a fixed term tenancy such as this one at the end of the fixed term, or a month to month tenancy at any time, by giving a landlord at least one rental period's notice in writing (s. 45 of the *Residential Tenancy Act*). One co-tenant can end the tenancy agreement for all his or her co-tenants.

AS's mid May email was effective to end the tenancy at the end of the following rental period: June 30, 2020. Until then, he was bound by the tenancy agreement and equally responsible with MH to see that the rent was paid in full. None of the correspondence before May 15 could be considered a tenant's notice to end the tenancy.

The landlord did not fail to mitigate her loss by evicting the tenants earlier, as arrears build up. First, there is no obligation on a landlord to do so, though in hindsight such action may have been wise. In any event a significant portion of the rent and utilities in

issue came due between March 18 and August 17, 2020, period during which a landlord was not permitted to end a tenancy for non-payment of rent under the Covid-19 rules instituted by the Residential Tenancy Branch.

In result, the tenant AS is legally responsible to pay the landlord the remainder of outstanding rent, totalling \$7000.00 and the outstanding utilities totalling \$1903.23.

Conclusion

The landlord YH is entitled to a monetary award of \$8903.23 plus recovery of the \$100.00 filing fee for this application.

I authorize the landlord YH to retain the \$1750.00 remainder of the security deposit, in reduction of the amount owing. The landlord will have a monetary order against AS for the remainder of \$7253.23.

AS is free to pursue his co-tenant MH for any contribution he may be entitled to.

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: November 09, 2020

Residential Tenancy Branch