



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for a monetary order for unpaid rent or utilities.

One of the landlords attended the hearing, gave affirmed testimony and also represented the other landlord. The tenant also attended, accompanied by another person for support. The tenant also gave affirmed testimony, and the parties were given the opportunity to question each other and give submissions.

All of the tenant's evidentiary material was filed 2 days prior to the hearing and was not provided to the landlord.

The landlord advised that he attempted to serve the tenant with the evidentiary material of the landlords by Registered Mail but was returned to the landlords because the forwarding address provided by the tenant was incomplete or incorrect. A copy of the returned envelope has been provided for this hearing.

Given that the tenant has not provided the landlords with any of the tenant's evidentiary material, I decline to consider any of it.

Since the landlords have provided evidence of sending the Hearing Package and evidence to the forwarding address provided by the tenant, all evidence of the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for a strata fine?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 1, 2019 and expired on May 31, 2020 thereafter reverting to a month-to-month tenancy. However, the landlord entered into a mutual agreement to end the tenancy on May 26, 2020 with a co-tenant, effective May 31, 2020. Rent in the amount of \$2,350.00 was due on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,175.00. Half was returned to the co-tenant, and the other tenant was sent a cheque in the amount of \$587.50 but was returned to the landlord because the tenant's forwarding address was incorrect. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that once the co-tenant signed the Mutual Agreement to End Tenancy the landlords told the tenant that she would have to sign a new lease.

The tenancy agreement specifies that if rent is paid in full on the 1st day of each month, the rent would be reduced to \$2,100.00, which was a \$250.00 discount. Each of the tenants paid half of the rent separately, and the co-tenant who moved out at the end of May always paid her portion on time, however arrears of \$940.00 for June remain outstanding for this tenant, and since rent was not paid on time, her portion of the discount was not provided.

The landlord claims \$2,190.00, being **\$940.00** for rent for the tenant remaining in the rental unit for 12 days during the month of June, 2020 and **\$1,250.00** for unpaid rent from December, 2019. The landlords have prepared a spreadsheet showing that the tenant was in arrears of rent the sum of \$250.00 for each of the months of December, 2019 and February through May, 2020 inclusive, as well as \$940.00 for the claim for June.

The landlord also testified that the strata imposed a fine in the amount of \$200.00 for loud music, party noise and smoke smell dated which occurred on April 16, 2020. A copy of the notice to the landlord dated May 27, 2020 has been provided for this hearing as well as a letter to the landlord from the Strata Corporation dated July 17, 2020 imposing the \$200.00 fine. The landlord has also provided copies of airline tickets to show that the co-tenant

who moved out at the end of May, 2020 was not at the rental unit when the contraventions were imposed. The landlord seeks recovery of the **\$200.00** fine.

The landlord received the tenant's forwarding address in writing by email on July 7, 2020 and the landlord sent a cheque on July 11, 2020 in the amount of \$587.50. It was returned to the landlord so the landlord sent it to the rental address on July 16, 2020, being the last known address of the tenant, and it was also returned to the landlord. The landlord also sent a cheque to the co-tenant in the same amount. A copy of an envelope stamped as processed by Canada Post on July 11, 2020 addressed to the tenant has been provided as evidence for this hearing.

The tenant testified that on May 26, 2020 the tenant found out that her roommate had signed a Mutual Agreement to End Tenancy, but the tenant knew that the roommate was intending to move out. The tenant could not get another roommate due to the Pandemic, and the roommate went to Montreal for a month and put a lock on the bedroom and bathroom door. She returned just before the lease ended.

The tenant expressed to the landlords that she wanted to continue the tenancy on a month-to-month basis.

The tenant has also provided evidence of rent paid in the amount of \$750.00 on December 15, 2019 and \$300.00 on December 28, 2019.

Analysis

The landlord is correct, that in a co-tenant relationship, where one tenant ends the tenancy, the tenancy ends. However, in a co-tenant relationship, where rent or a security deposit is collected, it applies to the tenancy, not to the individual tenant. The landlord cannot have it both ways.

I refer to Residential Tenancy Policy Guideline #13 – Rights and Responsibilities of Co-tenants, which states, in part: "Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement." It also states: "C. PAYMENT OF RENT Co-tenants are jointly and severally responsible for payment of rent when it is due."

The landlords have claimed as against one tenant, and I find that the landlords are required to name and serve the co-tenant. Since the landlords have not done that, I dismiss the landlords' claim for rent.

The tenant has not disputed the strata fine, and considering the evidence and testimony of the landlord, I find that the landlords have established the **\$200.00** claim.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the **\$100.00** filing fee.

The landlords have provided evidence of, and I am satisfied that the landlords attempted to repay the full amount of the security deposit within 15 days as required by the *Act*. During the hearing the parties had a conversation about the address provided by the tenant, but it is not clear why it was not delivered. Therefore, the tenant is not entitled to double recovery of any portion of the security deposit. The tenant has an obligation to provide a correct address for service and I find it unreasonable and inefficient to order the landlord to re-send a portion of the security deposit to the addresses the landlords have already sent it to. Therefore, I order the tenant to provide the landlord again with a forwarding address in writing. The tenant must do so prior to one year after the tenancy ended, and if the tenant doesn't do so, the landlord is not required to return any portion of the security deposit to the tenant.

I order the landlord to keep \$300.00 of the \$587.50 security deposit held in trust in full satisfaction of the landlords' claim.

Conclusion

For the reasons set out above, I hereby order the landlords to keep \$300.00 of the security deposit in full satisfaction of the landlords' claim.

This order is final and binding and may be enforced.

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 03, 2020

Residential Tenancy Branch