



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

This matter commence on January 8, 2021, the landlord’s application for damages to the rental unit was dismissed with leave to reapply. This was because in the landlord’s digital evidence sheet filed with their application on September 19, 2020, indicated that they will supply the tenant with a USB; however, they did not provide a description as required. Further, the landlord did not provide that USB to the tenants until January 4, 2020. I find that was unfair and prejudicial to the tenants as this evidence was available at the time, they made their application and it was required to be given to the tenants at that time. Due to this unreasonable delay the tenants were unable to submit their rebuttal evidence to the Residential Tenancy Branch for my review and consideration.

On January 8, 2021, the landlord’s claim for unpaid rent was heard. After the hearing I determined more evidence was needed to determine if both respondents are tenants under the Act. This limited reconvene hearing was reconvened at my request to be heard on this day, January 27, 2021. The interim decision should be read in conjunction with this decision.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

January 27, 2021, limited scope hearing

At the conclusion of the hearing on January 08, 2021, RDS raised the issue that they were not a tenant. I did not fully consider this matter and had this matter reschedule for this limited reason.

RDS testified that they original rented the premise with their daughter LK and they were both responsible to pay the rent as joint tenants. RDS stated that they never lived in the premise and they only rented it because her uncle had dementia and he was waiting to get into a care home, and he needed a temporary place to live. RDS stated that their uncle lived in the lower portion of the premise and their daughter lived in the upper portion.

RDS stated that their uncle left the premise in December 2019, and at that time her tenancy ended, leaving her daughter as the only tenant. RDS stated that her daughter took over the entire premise and was subletting the lower portion of the premise where her uncle was residing. RDS stated they were on a month to month tenancy and there was no need to give the landlord written notice to end the tenancy as there was no lease.

RDS testified that in March 2020, the tenancy was changed by removing the lower portion of the premise from their agreement due to the flood. This left her daughter living in the upper portion of the house. RDS stated that they did not agree to be a tenant or responsible for their daughters rent.

The landlord submits RDS was a tenant. Filed in evidence are rent receipts and audio recordings. I have reviewed the audio recording it show that both RDS an LK agreed upon the new rent and that would both be responsible to have the rent paid.

In this case a tenancy agreement is defined in Part 1 of the Act,

"tenancy agreement" means an agreement, whether written or **oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Once a tenancy agreement is created, such in this case it was an oral agreement, all provisions of the Act apply. This would include how a tenancy is ended.

Section 45(1) of the Act states a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (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.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy]

Section 52 of the states for a notice under section 45(1) of the Act 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,

In this case RDS did not give the landlord 30 days written notice to end the tenancy in December 2019, as required by the Act. When a tenancy is ended it ends the tenancy for all tenants. LK continued to live in the premise without entering into their own agreement. Therefore, the tenancy agreement continued even after RDS removed their uncle to a care home and LK used this portion of the premise to sublet.

While I accept this agreement changed in March 2020, as the lower portion of the premise was removed from the original agreement and the rent was lowered to reflect the change; however, I am satisfied that RDS never end the original tenancy. Further, the audio recording shows that both RDS and KL agreed to the rent amount as this was the discussion. KL could not afford to pay the rent on their own.

A tenant does not require to live in the premise to be responsible for the agreement as it is not uncommon that parents will enter into co-tenancy with their children to secure housing, such in this case KL was unable to afford the rent.

Based on the above, I find RDS and LK are both joint tenants under the Act.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agreed that the tenancy began on November 15, 2019. Rent in the amount of \$2,800.00 was payable on the first of each month. The tenant(s) paid a security deposit of \$1,400.00.

On March 1, 2020, the tenancy agreement was change as the tenants gave up the lower portion of the premise. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenancy ended on May 31, 2020. The security deposit has been returned.

The landlord claims as follows:

| | | |
|----|-------------------------------|-------------------|
| a. | Unpaid rent for February | \$1,550.00 |
| b. | Unpaid rent for April and May | \$3,900.00 |
| c. | Filing fee | \$ 100.00 |
| | Total claimed | \$5,550.00 |

The landlord testified that that the tenants only paid \$1,250.00 for February 2020, rent, as they withheld the amount of \$1,550.00 as they felt they were entitled to a 50% rent reduction due to a flood and a loss wage fee of \$150.00. The landlord stated they did not agree to these deductions to be made from the rent.

The landlord testified that the tenants also owe rent for April and May 2020, in the amount of \$3,900.00.

The tenants testified that there was a flood in the basement. The tenant stated they though a rent reduction of 50% was appropriate and the loss of wages of \$150.00. The tenant stated the landlord agreed to these deductions.

The tenants admit they owed the amount of \$3,900.00 for April and May 2020.

The landlord argued that they never agreed to the rent reduction this is was simply what the tenants told her they were taking as a rent reduction. The landlord stated that the flood was caused by the tenants' neglect.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

In this case, I find the tenants have failed to prove the landlord agreed to reduce the rent by \$1,550.00. I find it more likely than not that the tenants felt entitled to this deduction due to a flood in the basement.

Further, it was the tenants' responsibility to have renter's insurance which would have covered any loss or damage that may have incurred. Further, a tenant would not be entitled to a rent reduction until the issue of liability is determined. I find the tenants breached the Act, when they failed to pay all rent due. Therefore, I find the landlord is entitled to recover unpaid rent for February in the amount of **\$1,550.00**.

I further find the tenants breached the Act, when they admitted they did not pay rent for April and May 2020, in the amount of \$3,900.00. Therefore, I find the landlord is entitled to recover unpaid rent for April and May 2020, in the amount of **\$3,900.00**.

I find that the landlord has established a total monetary claim of **\$5,550.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order in the above noted amount.

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: January 29, 2021

Residential Tenancy Branch