



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNRL, FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking an Order of Possession because the tenant has given written notice to end the tenancy; a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord and both named tenants attended the hearing, and the landlord was represented by an Agent. The tenants were assisted by a friend to Advocate for the tenants, but that person did not testify or take part in the hearing. The landlord's agent and both tenants gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the tenant (MX) requested an alternate format for the hearing, by written submissions, which was opposed by the landlord's agent.

The landlord filed the Application for Dispute Resolution on July 26, 2022 and adjourning the hearing for written submissions would require additional time. Since the landlord has opposed it, and the parties are present, I declined the tenant's request and the hearing proceeded.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the tenant(s) gave notice to end the tenancy?
- Has the landlord established a monetary claim as against either of the tenants for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 1, 2021 and reverted to a month-to-month tenancy after April 30, 2022. A copy of the tenancy agreement has been provided for this hearing specifying rent in the amount of \$2,575.00 payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,287.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment, and neither the landlord nor the landlord's agent reside on the rental property.

The landlord's agent further testified that on May 31, 2022 one of the tenants (LM) gave notice to end the tenancy by email, effective June 30, 2022 and a copy has been provided for this hearing. The landlord's agent acknowledged receipt of the notice. One of the tenants has remained in the rental unit and still occupies it. The landlord's agent asked how long the tenant needed to move out, and the landlord and landlord's agent agreed to extend the tenancy for 1 more month and the tenant was required to pay rent for the month of July. However, the tenant kept insisting he could not move.

The landlord's agent sympathizes with the tenant but there is nothing more he can do. The remaining tenant seems to be able to afford rent, but not the full rent for this rental unit. The landlord's agent has offered to send the remaining tenant 1 bedroom or studio apartment listings that might be more affordable, however the tenant wouldn't accept the offer, wanting to stay but not pay rent. The other named tenant (LM) refused to reinstate the tenancy, and the tenancy should have ended on June 30, 2022. The tenant (MX) is over-holding.

Currently the arrears of rent for the over-holding period have amounted to \$7,725.00 for the months of August, September and October, 2022. The landlord has not served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; the tenancy ended on June 30, 2022 and was extended to July 31, 2022. The landlord's agent sent the over-holding tenant an email on July 1, 2022 saying that the tenant can only stay if there is another guarantor to support the rent payment, or the tenant will have to move out, and that the rent for July, 2022 is for use and occupancy only for the month of July. The arrangement for the tenancy to be extended for the month of July did not involve the tenant (LM), only the remaining tenant (MX).

The landlord seeks an Order of Possession and a monetary order for the rent for the over-holding period amounting to \$7,725.00 as well as recovery of the \$100.00 filing fee.

The first tenant (LM) testified that she fulfilled her obligation until the tenancy ended on June 30, 2022 and anything that had to do with the tenancy after that, and any of the landlord's claims should only be between the landlord and the other tenant (MX).

The tenant (LM) never lived in the rental unit, but agreed to be guarantor so that the tenant would have a place to live, and the tenant (LM) personally paid the last 2 months of rent.

On May 11, 2022 the tenant (LM) texted the other tenant (MX) saying that a notice to end the tenancy had to be given, and if the tenant (MX) found another guarantor it might work out for the landlord, who might agree with a new tenancy agreement effective July 1, 2022, and followed up with the tenant (MX). May's rent was \$800.00 short, but it was paid in full as well as June's rent by the tenant (LM).

The tenant (LM) sent an email to the landlord's agent on July 5, 2022 indicating that she was not willing to cancel the notice ending the tenancy. On August 10, 2022 the landlord's agent advised that the other tenant was still there and a notice of dispute resolution package was being sent to the tenants. The tenant (LM) is not liable for rent after June 30, 2022 and any monetary claim should be against the other tenant only.

The second tenant (MX) testified that he has a disability. The tenant asked the landlord's agent to allow the tenant to stay but the request was denied repeatedly. From the tenant's perspective, since the request was denied, the tenant did not consider that paying the rent was the best use of limited funds, however if the landlord had allowed the tenant to stay, efforts would have been made to pay the rent.

SUBMISSIONS OF THE TENANT (LM):

The tenant has provided a copy of Residential Tenancy Policy Guideline 13 – Rights and Responsibilities of Co-tenants, and refers to paragraphs that read as follows:

“In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice and all tenants must move out, even

where the notice has not been signed by all tenants. When a tenant has ended the tenancy by giving written notice, all co-tenants remain responsible for meeting the terms of the tenancy agreement until the effective date of the notice.

“Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.”

The responsibility of the tenant (LM) ended.

SUBMISSIONS OF THE LANDLORD’S AGENT:

The Policy Guideline also states that even if 1 tenant moves out, all tenants are still liable. The landlord’s agent agrees that the tenant (LM) wanted to end the tenancy, but the landlord did not start a new tenancy, only an extension for the same tenancy agreement.

Analysis

There is no question that one tenant gave a notice to end the tenancy effective on June 30, 2022, which was acknowledged the landlord. The parties also agree that the tenant who gave the notice (LM) did not agree to extend the tenancy beyond its effective date, who submits that any agreements made by the landlord were only between the landlord and the remaining tenant (MX).

According to the law and the Policy Guideline, once a notice to end a tenancy is given by a tenant, it cannot be withdrawn without the consent of the parties, which was not consented to, and the notice to end the tenancy applies to all co-tenants, even though not all tenants signed it. The Policy Guideline states that all co-tenants remain responsible for the tenancy until the effective date of the notice. The *Residential Tenancy Act* specifies how a tenancy ends, one method of which is that the tenant gives notice, which ends the tenancy on the effective date of the notice. In this case, the effective date was June 30, 2022.

The landlord agreed with the remaining tenant (MX) to extend the effective date of the notice to end the tenancy to July 31, 2022, and the landlord’s agent testified that an email was sent to the tenant saying that the tenant can only stay if there is another guarantor to support the rent, and that the rent paid for July, 2022 is for use and occupancy only for the month of July. The only reference to that in the evidence is in

the emails provided by the tenant, which states that the landlord is willing to accept the rent and extend the tenancy.

I have reviewed all of the evidence, and particularly an email from the landlord's agent to the tenant (MX) with a copy to the other tenant (LM) dated June 30, 2022 stating that the landlord is willing to accept rent and extend the tenancy, asking if the other tenant (LM) would like to cancel the notice to end the tenancy, which was denied. On July 6, 2022 the landlord's agent advises the tenant (LM) that the tenancy is extended one more month for the remaining tenant to find somewhere to move. Further emails indicate that the tenant (LM) did not agree to any extension, but specifically denied any request to extend the tenancy beyond the effective date of the notice given. Therefore, I find that the tenancy for the tenant (LM) ended on June 30, 2022 and the landlord has no claim against that tenant.

Referring again to the Policy Guideline, a portion of which was sent to the landlord's agent by the tenant (LM):

"Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

"If a tenant remains in the rental unit and continues paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement."

Neither the *Act* nor the Policy Guideline contemplate an "extension." Since the landlord has accepted the rent beyond the effective date of the notice to end the tenancy for an "over-holding" tenant, the landlord has effectively entered into a new tenancy agreement with the remaining tenant.

The landlord's application for an Order of Possession is dismissed, and I find that a new tenancy agreement has been entered into by the parties in the same terms as the previous tenancy agreement, but does not include the tenant (LM).

I accept that rent remains unpaid, however considering there are few days left in this month, the landlord is at liberty to serve the remaining tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. If the tenant pays the outstanding rent within 5 days of service (or deemed service), the notice will be of no effect. The landlord will

also be at liberty to apply for monetary compensation from the remaining tenant (MX) for the amount of rent outstanding at that time.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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: October 28, 2022

Residential Tenancy Branch