



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: CNC MNDC
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 23, 2023.

Both parties attended the hearing and provided affirmed testimony. All parties provided were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's Notice of Dispute Resolution Proceeding and evidence packages. No service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the parties confirmed that the Tenant moved out of the rental unit on or around February 6, 2023. As such, the Landlord no longer needs an order of possession, and the Tenant no longer needs her application to cancel the Notice to End Tenancy. Further, the Tenant stated that she wishes to withdraw the remainder of her application. In consideration of this, I hereby dismiss the Tenant's application to cancel the Notices to End Tenancy, without leave to reapply, and dismiss her application for monetary compensation, with leave to reapply.

Further, since the tenancy is over, the only remaining ground on the Landlord's application is for monetary compensation for unpaid rent, which will be addressed further below.

The Landlord put an amendment in her evidence package attempting to include other monetary amounts (cleaning etc). However, she did not file this amendment with our office in the appropriate manner, and there is insufficient evidence this amendment was included in the documents she served to the Tenant. As such, the Landlord is granted leave to reapply for any other monetary compensation unrelated to the issue of unpaid rent.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

Issue(s) to be Decided

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

Background and Evidence

Both parties agree that:

The Landlord named on this application rents the whole house from the owner, and subsequently rented out the lower basement suite in this house to the person named as the Tenant on this application. The parties had a verbal tenancy agreement whereby the Tenant would pay the Landlord \$1,000.00 on the first of each month. The Landlord stated that she lives upstairs, and there is a door that separates her unit from the unit below, where the Tenant lived with another occupant. The Tenant paid, and the Landlord still holds a security deposit in the amount of \$500.00.

The Landlord is seeking to recover unpaid rent for December, January, and February, as no rent was paid for these months. The Landlord stated that the Tenant only gave

notice, in writing, on January 28, 2023, that she would be moved out within a week. The parties agree that the Tenant moved out on February 6, 2023.

The Tenant does not refute that she failed to pay any rent for the above noted months, and she does not refute that she provided notice on January 28, 2023, that she would vacate by February 6, 2023.

Analysis

I will first turn my mind to whether or not the Landlord, as named on this application, is a Landlord under the Act.

I have included some relevant excerpts from the Policy Guidelines and the Act as follows:

Section 1 of the Act defines a Landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
 - (i) permits occupation of the rental unit under a tenancy agreement, or*
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c) a person, other than a tenant occupying the rental unit, who*
 - (i) is entitled to possession of the rental unit, and*
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

Residential Tenancy Policy Guideline # 13 provides an explanation of the difference between a Tenant, and Occupants.

Tenant

A Tenant is the person who signed the tenancy agreement. Co-tenants are two or more Tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement and have equal rights under the tenancy agreement.

Occupants

Where a tenant allows a person who is not a Tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Residential Tenancy Policy Guideline #19 provides an explanation of Subletting and Occupants/Roommates.

Subletting

A Tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the Landlord.

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant. There is no contractual relationship between the original landlord and the sub-tenant.

Occupants/Roommates

The Guideline provides:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy

agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

I have considered the testimony and evidence of both parties. I note the area the Tenant, as named on this application, occupied was largely self contained, and the Landlord, as named on this application, did not use the space. I accept that the Landlord rents this house from the owner. Since the Landlord does not use or occupy the lower area, which is separate from her area upstairs, I find the Landlord and the Tenant are not roommates/occupants. I find the Tenant had use of the lower rental unit, exclusive of the Landlord's space upstairs. I note rent was paid by the Tenant to the Landlord, and the Tenant never signed an agreement with the owner, nor was rent paid to the owner.

I find the Landlord meets the definition of a "landlord" under section 1(c) of the Act. I find there is sufficient evidence of a Landlord/Tenant relationship, and I accept jurisdiction on this matter. Below is my analysis of the issue of unpaid rent.

In this case, the burden of proof rests with the Landlord to demonstrate what is owed.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

In this case, the Tenant does not refute that she failed to pay any rent for December, January, or February. I note the Tenant moved out on February 6, 2023. However, I find she breached section 45(1) of the Act, which states the following:

45 (1)*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.

In this case, the Tenant only gave 7 days notice to the Landlord, which I find would have made it challenging to effectively mitigate rental losses for February 2023. I find the Tenant ought to be liable for February 2023 rent, as well as December/January, given her breach of the Act. I am satisfied it would have been nearly impossible to mitigate February 2023 rental losses with only 7 days notice given before moving out.

I award December, January, and February rent in full, totalling \$3,000.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent	\$3,000.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$500.00)
TOTAL:	\$2,600.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,600.00** comprised of rent owed. This order must be served on the tenants. If the tenants fail 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: March 24, 2023

Residential Tenancy Branch