



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding GALAXY VA 1948 MCCALLUM APARTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on March 3, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- An order of possession for the rental unit as the tenant(s) gave notice to end the tenancy; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 am on June 19, 2023, and was attended by SJ, legal counsel for the Landlord (Lawyer). The Lawyer was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Lawyer was advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Lawyer was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Lawyer was also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution, the Notice of Hearing, and any evidence intended to be relied upon by applicants. As the Tenants did not attend the hearing, I confirmed service of these documents as follows. The Lawyer stated that on March 8, 2023, the Notice of Dispute Resolution Proceeding (NODRP), which contains the Application and the Notice of Hearing, and the

documentary evidence, was sent to each of the Tenants by registered mail at the rental unit address. The Lawyer also provided me with the registered mail tracking numbers and receipts. Although I am satisfied that the NODRP and the documentary evidence before me was sent as described above, the Lawyer stated that the Tenant TD vacated the rental unit on February 28, 2023. As a result, I find that the rental unit address was not a valid address for service for TD. Although the Lawyer argued that TD would have received the registered mail if they set up mail forwarding, no proof of mail forwarding was submitted for my consideration. As a result, I am not satisfied that TD was served as required. I have therefore removed them as a named respondent.

Despite the above, I am satisfied that AK remained in the rental unit at the time the registered mail was sent, and I therefore deem them served with it five days later on March 13, 2023, pursuant to section 90(a) of the Act and Policy Guideline #12.

Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Landlord on March 7, 2023. As I am satisfied that AK was sent a copy the following day by registered mail, I find that the NODRP was served in accordance with section 59(3) of the Act and rule 3.1 of the Rules of Procedure. As co-tenants are jointly and severally liable under the Act and their tenancy agreement, the hearing therefore proceeded as scheduled against only AK. I verified that the hearing information contained in the NODRP was correct and note that the Lawyer was able to attend the hearing on time using this information. As a result, the hearing of the Application proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of either Tenant or an agent acting on their behalf. Although the teleconference remained open for the 15-minute duration of the hearing, no one attended on behalf of either Tenant.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

The Lawyer stated that AK did not pay rent while they were overholding the rental unit and vacated on May 31, 2023. As a result, they stated that the Landlord wished to seek compensation for overholding. No amendment to the Application was filed seeking

monetary compensation and monetary compensation, other than recovery of the filing fee, was not sought in the Application.

Rule 6.2 of the Rules of Procedure states the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. Although rule 4.2 of the Rules of Procedures allows me to amend an application for dispute resolution at a hearing, I may do so only in circumstances that can reasonably be anticipated. As no monetary compensation was sought as part of the Application, and nothing in the Application indicated that AK had not paid rent or compensation for overholding while continuing to occupy the rental unit, I find that it would not be reasonable for AK to have anticipated that the Landlord would seek monetary compensation for unpaid rent or compensation for overholding as part of this hearing. As a result, I declined to amend the Application at the hearing to include any outstanding rent or compensation for overholding.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession for the rental unit as the tenant(s) gave notice to end the tenancy?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Lawyer submitted a copy of a written notice to end tenancy authored by TD on January 31, 2023. In this notice TD stated that they will vacate the rental unit by the end of February 2023. A copy of the tenancy agreement was also submitted listing TD and AK as co-tenants of the rental unit under the same tenancy agreement.

The Lawyer stated that TD vacated the rental unit on February 28, 2023, in accordance with their notice to end tenancy, but that AK continued to overhold the rental unit. As a result, the Landlord was forced to seek an order of possession. The Lawyer stated that AK vacated the rental unit shortly before the hearing, on May 31, 2023, and as a result, the Landlord no longer requires an order of possession. However, the Lawyer stated that the Landlord still wishes to recover the filing fee by withholding its amount from the \$779.00 security deposit held in trust.

Analysis

I am satisfied that AK and TD were co-tenants of the same rental unit under the same tenancy agreement. As a result, I am satisfied that TD ended the tenancy for both them and AK when they gave notice on January 31, 2023. As a result, I find that the tenancy ended for both TD and AK on February 28, 2023, pursuant to section 45(1) of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #13, section E. I am also satisfied that AK overhired the rental unit, resulting in the Landlord's need to file the Application. Although the Landlord no longer requires an order of possession as AK vacated the rental unit on May 31, 2023, I am satisfied that the Landlord's Application was justified. As a result, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, the Landlord may therefore retain \$100.00 from the \$779.00 security deposit currently held in trust. The remaining \$679.00 balance, plus any interest owed, must be dealt with by the Landlord in accordance with the Act.

Conclusion

Pursuant to sections 72(1) and 72(2)(b) of the Act, the Landlord may retain \$100.00 from the Tenants' security deposit for recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 19, 2023

Residential Tenancy Branch