Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, damage to the unit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

One of 2 co-tenants applied requesting return of the deposit paid and filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions during the hearing.

Preliminary Matters

The landlord submitted their application on May 17, 2012. The landlord confirmed that their evidence was served to the tenant on July 6, 2012, via registered mail. The Residential Tenancy Branch was given the landlord's evidence on July 6, 2012. The tenant confirmed receipt of the evidence package on July 10, 2012.

Section 90 of the Act sets out service dates; the Residential Tenancy Branch Rules of Procedure provide standards for service. The landlord was required to submit their evidence to the Residential Tenancy Branch (RTB) at least 5 days prior to the hearing. The evidence was received on July 6, 2012; however, the day of delivery, the day of the hearing and weekends are not included in calculating days of service to the RTB. Therefore, the landlord's evidence was found to be late and set aside; the landlord was at liberty to make oral submissions.

The landlord has named 2 tenants on their application; one of whom is their daughter. The landlord's daughter was present with the landlord during the hearing.

Only 1 of the 2 co-tenants had submitted an application, naming the landlords as respondents.

The tenant's CD evidence was set aside as the parties were not prepared to view a CD during the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $550.00 for unpaid May, 2012, rent?

Is the landlord entitled to compensation in the sum of $400.00 for damage to the rental unit and damage or loss?

Is the tenant entitled to return of the deposit paid?

Is either party entitled to filing fee costs?

Background and Evidence

This tenancy commenced on May 22, 2010; rent was $1,100.00 per month, due on the first day of each month. A deposit in the sum of $550.00 was paid. Each tenant paid one-half of the deposit. A copy of the tenancy agreement was supplied as evidence.

The parties confirmed that the tenancy agreement was between the landlord's daughter and her roommate; they each signed the tenancy agreement with the landlord. The agreement indicated that "N. starts May 22/2010; R. starts May 22/2010." N. is the landlord's daughter, R. is the co-tenant/applicant.

On May 22, 2010 the landlord completed a move-in condition inspection report with their daughter. N. stated she received a copy of the report; R. said she did not receive a copy of the inspection report.

The parties do not dispute that in early April, 2012, the tenant/applicant gave notice to end the co-tenancy effective April 30, 2012. The tenant paid April rent and vacated the unit.

The parties agreed that they met with R. on April 30, 2012, to complete a move-out condition inspection; a report was not completed at that time and there was disagreement in relation to the condition of the unit.

In May, 2012, the landlord's daughter paid $550.00 rent.

The landlord is claiming unpaid rent in the sum of $550.00 as the tenants did not give proper notice to end the tenancy and one-half of May's rent was unpaid.

On May 30, 2012, the landlord and their daughter completed a move-out condition inspection report which they said was in relation to the co-tenancy that N. and R. shared. The landlord had also testified that the tenancy ended when R. vacated the unit.

In mid-May, 2012, the landlord returned the complete deposit to their daughter. The tenant/applicant has applied for double the portion of the deposit she paid.

The landlord claimed $400.00 in damage to the unit and for damage or loss. No detailed calculation of the claim was provided with the application. During the hearing the landlord stated that they are entitled to compensation for:

- $107.00 carpet cleaning;
- $65.00 prepping and painting;
- $500.00 lock replacement; and
- $66.00 cleaning.

The landlord has obtained estimates for the cost of cleaning; they were not supplied as evidence. The painting was required as the walls in the tenant's bedroom had several areas of damage and the hallway wall was damaged. The landord claimed costs for their own time.

The tenant did not return the key to her room; the landlord confirmed that at the end of the tenancy the tenant asked if she could take the landlord's key to have a copy made, and that the landlord had refused to give the tenant the opportunity to do so.

The landlord stated that in May, 2012, a Notice to end tenancy for unpaid rent was issued to the tenants.

Analysis

Residential Tenancy Branch policy provides a definition of co-tenants:

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. Co-tenants also have equal rights under the tenancy agreement.

In relation to the nature of this tenancy, based on policy, which I find reasonable, I have determined that this was a co-tenancy.

Pursuant to section 44(1)(f) of the Act, I find that the tenancy ended on April 30, 2012, when tenant R. vacated the unit. The landlord and tenant met to complete an inspection report and even though one was not signed; I find, on the balance of probabilities, that the intention was clear; that the tenancy was ending.

The landlord then returned the deposit to their daughter; one of the co-tenants. The deposit was returned in mid-May; which I find supports the ending of the co-tenancy effective April 30, 2012.

I have based this finding, in part of RTB policy, which suggests that when a co-tenant gives notice and vacates:

> *If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.*

Therefore, I have found that the tenancy ended on April 30, 2012 and that the landlord entered into a new tenancy agreement with their daughter, effective May 1, 2012. As a new tenancy commenced, I find that they did not suffer a loss as the result of the initial tenancy ending and that the claim for loss of rent revenue is dismissed. The landlord was able to choose the rent payable once the new tenancy commenced on May 1, 2012. If a Notice was issued in May for unpaid rent; that Notice would have been in relation to the new tenancy created effective May 1, 2012.

I have placed considerable weight on the fact that the landlord chose to return the deposit to their daughter in May, 2012; during a time which the landlord has claimed a loss of rent revenue. I question why the landlord would have returned a deposit to their daughter, a co-tenant named as a respondent in the landlord's application, if they had suffered a loss of rent revenue due to a breach of the Act. Their daughter was equally responsible for the terms of the initial co-tenancy agreement, yet she was given the $550.00 deposit, which would have satisfied the loss of rent revenue claimed for May, 2012. By giving their daughter the deposit I find that the landlord has demonstrated that no loss of rent revenue was experienced; that the co-tenancy had successfully ended and that it was the equivalent of returning the deposit to both of the co-tenants.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of any verification of the costs claimed; I find that the claim is dismissed. Further, the landlord's application did not set out the details of the claim, by providing a calculation of the amounts for each item. The application indicated a claim in the sum

of $400.00 for damage; yet the amount detailed during the hearing totalled $288.00. A respondent is entitled to know the claim made and must be provided with a detailed breakdown of that claim at the same time that an application is given. That did not occur.

As the deposit has been given to one of the co-tenants, I find that the tenant's claim is dismissed.

Conclusion

Both applications are dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 17, 2012.

Residential Tenancy Branch