Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on April 28, 2021 (the "Application"). The Landlords applied as follows:

- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Tenant H.M. provided their correct legal name and the Landlord agreed to the Application being amended to reflect this. Tenant H.M.'s correct legal name is reflected in the style of cause.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlords' evidence.

Tenant H.M. confirmed receipt of the hearing package and Landlords' evidence and confirmed they could open and view the evidence.

Tenant A.R. confirmed receipt of the hearing package and Landlords' evidence; however, testified that they could not open the evidence. Tenant A.R. confirmed they were fine with proceeding with the hearing on the date set and were fine with the

Landlords' evidence being admitted and therefore I did not go into the issue of Tenant A.R. not being able to open the evidence further.

Preliminary Issue - Jurisdiction

A written tenancy agreement was submitted as evidence. It is between the Landlords and Tenant A.R. The tenancy started July 09, 2017. The Tenant paid a $367.50 security deposit. The agreement is signed by the Landlords and Tenant A.R.

Both parties agreed the 2017 tenancy agreement is accurate. Tenant A.R. testified that a further written tenancy agreement was completed between the parties. The Landlord denied there was a further written tenancy agreement completed between the parties. Tenant H.M. did not know if a further written tenancy agreement was completed.

There is a Schedule of Parties submitted which lists Tenant H.M. as a "guarantor" and includes Tenant H.M.'s signature.

Policy Guideline 27 states at page 5:

> 3. CO-SIGNERS AND GUARANTORS
>
> A co-signer is a person who signs a tenancy agreement along with the tenant to guarantee the tenant performs the tenancy agreement, e.g., pays rent. A guarantor is a person who signs a separate agreement to guarantee the tenant performs the tenancy agreement, e.g., pays rent.
>
> The director has jurisdiction to resolve disputes between co-signers and landlords because they are parties to the tenancy agreement. The director has no jurisdiction to resolve disputes between landlords and guarantors however, because they are not parties to the tenancy agreement.

I read the above to the parties and asked for submissions about whether Tenant H.M. was a guarantor or co-signer of the tenancy agreement.

The Landlord testified as follows. They used "co-signer" and "guarantor" interchangeably. Tenant A.R. was a young tenant with no rental experience and a new job and therefore the Landlords wanted someone to co-sign or guarantee to be responsible for any damages that occurred. Tenant A.R. provided Tenant H.M. as a co-signer or guarantor.

Tenant A.R. testified that they thought Tenant H.M. was included because Tenant A.R. had not yet found a job when they rented the unit.

Tenant H.M. testified as follows. They agreed to be a co-signer for Tenant A.R. They asked the Landlords to let them know if there were any issues in the rental unit and the Landlords did not do so until six months ago. If the Landlords had told Tenant H.M. about the issues in the rental unit, they would have addressed them.

I accept that there was only one written tenancy agreement completed between the parties because there is only one written tenancy agreement in evidence before me and Tenant A.R. did not point to documentary evidence to support their position that a further written tenancy agreement was completed.

I accept that Tenant H.M. was a "co-signer" to the tenancy agreement and not a "guarantor" despite the wording used on the Schedule of Parties. I accept that the Landlord used the terms "co-signer" and "guarantor" interchangeably. I find that the Schedule of Parties is not a separate agreement from the tenancy agreement because it does not have any terms or include any additional information other than Tenant H.M.'s name, address, phone number and signature. I note that a Schedule of Parties is what parties often use if there is insufficient space on a tenancy agreement to include all names. I find the Schedule of Parties is part of the tenancy agreement. Further, Tenant H.M. referred to themselves as a "co-signer" when asked for submissions about Policy Guideline 27 and therefore I accept that both parties intended Tenant H.M. to be a co-signer to the tenancy agreement.

I do not find it relevant to the jurisdiction issue that the Landlords did not notify Tenant H.M. of issues in the rental unit prior to six months ago because this does not impact the contractual relationship between the Landlords and Tenant H.M.

Given the above, I find Tenant H.M. is properly named on the Application and that the RTB does have jurisdiction to decide this matter as it relates to the Landlords and Tenant H.M.

Settlement

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Residential Tenancy Act* (the "*Act*") which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear and decide the matter. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear and decide the matter. If they did come to an agreement, I would write out the agreement in my written decision. The written decision would become a final and legally binding agreement and the parties could not change their mind about it later.

The parties agreed to discuss settlement and a discussion took place.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I confirmed all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily.

Settlement Agreement

The Landlords and Tenants agree as follows:

1. The Landlords can keep the $367.50 security deposit.

2. The Tenants will pay the Landlords an additional $4,668.75 and the Landlords are issued a Monetary Order in this amount.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlords are issued a Monetary Order in the amount of $4,668.75. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

An issue about service arose at the hearing because the Landlord did not have an updated address for Tenant A.R. Tenant A.R. confirmed the Landlords can serve them by email and confirmed the email address noted on the Application.

Conclusion

The Application is dealt with by way of settlement as outlined above.

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: November 22, 2021

Residential Tenancy Branch