

Decision

Dispute Codes: OPC MNR FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The Landlord and the Tenant gave affirmed testimony and this Application proceeded on its merits.

This is the Landlord’s application for a monetary order for unpaid rent, an order of possession for cause and to recover the filing fee from the Tenant for the cost of this Application.

Preliminary Matters

The rental unit is the upstairs floor of a house. The monthly rent is \$1,500.00, due on the 1st day of each month.

At the onset of the Hearing, it became clear that there was an issue regarding the number of tenants who were party to the Tenancy Agreement.

The Landlord testified that the Tenancy Agreement was between the Tenant and the Landlord only. The Tenant agreed that he was the sole Tenant, however he testified that the Landlord agreed to two other people occupying the unit.

The Landlord testified that the other occupants had each directly paid the Landlord a portion of the \$1,500.00 rent for the months of November, 2008, December, 2008 and \$200.00 towards rent for January, 2009.

A copy of the Tenancy Agreement was entered into evidence on the case file. The first page of the Tenancy Agreement identifies the Tenant as the sole tenant and makes

reference to the other two occupants as “wife and son”. One of the occupants (the “wife”) had also signed the last page of the Tenancy Agreement as a tenant.

The Landlord testified that she mailed the Application for Dispute Resolution and the hearing package, by registered mail, to both the Tenant at his new address and the other occupants at the rental unit.

By virtue of the fact that the Landlord served the other occupants with the Application and accepted rent directly from the occupants, I find that the Landlord accepted the occupants as co-tenants under the Tenancy Agreement.

The Tenant vacated the premises on December 31, 2008 after entering into a Mutual Agreement to End Tenancy with the Landlord, effective December 31, 2008. The Landlord agreed that the Tenant has properly conformed to the terms of the Tenancy Agreement and that this tenancy has ended. She stated that she wants the other occupants to vacate the rental unit based on unpaid rent for January, 2009. The Landlord indicated that she wants to proceed against the current co-tenants.

I find that the co-tenants have only made partial rent payments for the month of January, 2009. Therefore, the Landlord must serve the co-tenants with a 10 Day Notice to End Tenancy, in accordance with the service provisions of the Act.

Conclusion

I dismiss the Landlord’s application for an order of possession and monetary order against the vacating Tenant. The Landlord is at liberty to apply against the co-tenants should it be necessary in the future.

February 4, 2009
