



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and given in person to the tenant on June 24, 2009. As the tenant had left the rental suite and did not provide a forwarding address the landlord served the tenant at her place of work.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the tenant responsible for all the rent arrears?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This tenancy started on December 01, 2008 and ended on June 22, 2009. Rent for this unit was \$1,700.00 per month payable on the 1st of each month. The tenants paid a security deposit of \$850.00 on November 11, 2008.

The landlord testifies that there were two co-tenants on the tenancy agreement and the tenants also sublet a room in the suite to a roommate. On June 01, 2009 one of the tenants called the landlord to tell her that there had been a fight between the two tenants and the police had been called. The police had advised this tenant not to return to the suite due to the other tenants' violent behaviour. The tenant gave the landlord a verbal notice to end tenancy for the end of June 2009. The landlord testifies that she asked the tenant to change the notice period to June 15, 2009 so she could attempt to re-rent the suite. The tenant did this in writing to the landlord. The landlord and tenant agree that they worked cooperatively to try to re-rent the unit but could not find another tenant until July 01, 2009.

The landlord claims the tenant is responsible for the rent for June and served the tenant with a 10 Day Notice to End Tenancy when rent was not paid by the due date. This Notice was served on the tenant on June 03, 2009. However, the landlord and tenant agree that only one page of the 10 Day Notice was served on the tenant. The rental suite was cleaned and empty by June 22, 2009 and the tenancy ended on this day. This tenant agreed the landlord could keep the security deposit of \$850.00 towards her outstanding rent. The landlord also testifies that there were outstanding utilities owed by the tenants.

The tenant confirms the landlords' testimony concerning the fight with her co-tenant and the police had asked her not to return to the suite. She confirms that she did give the landlord one Months Notice to end the tenancy and she agreed to move out sooner and amended this to June 15 to support the landlord in finding a new tenant. The tenant testifies that both herself and her roommate gave their share of June's rent to the co-tenant and the co-tenant had stopped the rent cheque at her bank. She testifies that she only gave Notice to end her own tenancy as she was unsure if her co-tenant was returning to the rental suite. The tenant testifies that she did not

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request an extension beyond June 15, 2009 and had removed her belongings and that of the other tenant and roommates. She states that the police advised her to dispose of her co-tenants belongings.

The tenant testifies that she agreed to pay the landlord her 50% share of the rent for June and agreed the landlord could keep the security deposit to cover the amount she believed was owed by her. The tenant also paid \$38.46 for her 50% share of the utilities. The tenant suggests the landlord contacts the co-tenant at her place of work and recover her share of the rent and utilities from her.

Analysis

The Residential Tenancy Policy Guidelines #13 states:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

Where co-tenants have entered into a periodic tenancy and one tenant moves out, that tenant may be held responsible for any debt or damage relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. 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

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have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

Due to the above I find the tenant is responsible for the rent and utilities due and must seek claims against the co-tenant for her share. However, as the tenant gave the landlord a Notice to End Tenancy for June 30, 2009 and the landlords testimony confirms that she asked the tenant to amend this Notice date for June 15, 2009 and the tenants did not fully vacate the rental suite until June 22, 2009, I find the tenant is only responsible for the rent up to June 22, 2009 to the amount of **\$1,246.66** (22 days at \$56.66 per day).

The tenant and landlord agree that the tenant told the landlord to keep the security deposit of \$850.00 in payment of the rent owed by her. Therefore, I Order the landlord to keep the tenants security deposit in partial satisfaction of her claim.

I find the tenant is also responsible for the outstanding utility bill of **\$38.44** as the agreement entered into was as co-tenants they each assume responsibility for the other party in the same way rent is owed to the landlord.

I find the 10 Day Notice issued to the tenant on June 03, 2009 was not valid as only one page of the Notice was given to the tenant. However, as the tenant had already given the landlord Notice to End the Tenancy and agrees that the rent for June has not been paid this Notice is Null in Void and has no effect at this hearing.

As the landlord has been partially successful she is entitled to recover the \$50.00 filing fee for this application. A Monetary Order has been issued for the following amount:

Outstanding rent for June 2009	\$1,246.66
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$851.78)
Total amount due to the landlord	\$483.32

Conclusion



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I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$483.32**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 05, 2009.

Dispute Resolution Officer