



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNSD, CNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant has made Application for Dispute Resolution to cancel a Notice to End Tenancy.

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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The tenant testified that she did not serve the landlord with her Application for Dispute Resolution. The landlord was unaware of the tenant's Application but did receive copies of evidence submitted by the tenant in relation to the landlord's Application.

I determined that due to the failure of the tenant to serve the landlord with notice of her Application, that the tenant's Application be dismissed with leave to reapply. However, as provided by section 46(4), I find that the tenant did make application to cancel the Notice within 5 days of receiving the Notice. Therefore; I accepted the tenant's testimony in relation to the landlord's Application requesting an Order of possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

This fixed-term tenancy commenced on July 1, 2009. The written tenancy agreement does not state whether the tenancy ends on July 1, 2010, or if it converts to a month-to-month tenancy at that time.

Rent is \$650.00 per month, due on the first day of the month. A deposit in the sum of \$187.50 was paid on July 1, 2009. Each month the landlord has received a cheque in the sum of \$375.00 from the government, as part of the tenant's disability entitlement, and the tenant pays the balance of rent owed in cash.

During the hearing the parties agreed to the following facts:

- That in August the parties agreed a second occupant could move into a bedroom in the rental unit;
- That when a roommate was identified for the second bedroom, rent would be altered to \$400.00 per month for each the tenant and new occupant;
- That a new occupant moved in to the second bedroom and paid rent directly to the landlord for August, September and October 2009;
- That a new occupant has not since been identified;
- That the landlord has attempted to show the second bedroom to prospective occupants; and
- That on January 4, 2010 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent in the sum of \$250.00 due January 1, 2010.

The landlord has received the following rent payments:

Month	Tenant	Second Occupant
September 2009	400.00	400.00
October 2009	400.00	400.00
November 2009	400.00	Moved out
December 2009	400.00	
January 2010	400.00	

The landlord is holding a February rent cheque in the sum of \$375.00.

The parties dispute the nature of the current tenancy agreement. The tenant submits that the written tenancy agreement was verbally altered in August 2009 when the landlord agreed to assist her in locating new occupants for a second bedroom in order to reduce her rent.

The tenant supplied copies of newspaper advertisements placed in the local newspaper in the months of August, October and December 2009, seeking a renter for the second bedroom, at a rate of \$400.00, which included a shared bathroom and kitchen. The advertisements include either the landlord's phone number or the tenant's number as the contact for this rental.

The landlord submits she was attempting to assist the tenant with her rent payments but that the tenant was solely responsible for locating roommates. If the tenant failed to locate a roommate she was expected to pay the landlord \$650.00 per month; if there was a roommate the tenant was allowed to pay \$400.00 per month.

The tenant countered that the landlord wanted full decision-making authority over who moved into the second bedroom and that while the tenant did attempt to find another renter, she was not responsible for the balance of rent owed when a second occupant was not renting the other bedroom.

A second occupant moved into the rental unit in August 2009 and paid his \$400.00 rent directly to the landlord during his three month tenancy. The landlord confirmed that the tenant did not handle these rent payments. The landlord submitted that she did not have a tenancy agreement with this occupant, only a month-to-month arrangement.

On November 18, 2009, the tenant gave the landlord written notice that she would move out at the end of November, unless she could locate another occupant to assist with the rent payments. The tenant identified a possible renter on December 6, 2009 but by the time the landlord contacted him on December 16, he was no longer interested in renting.

The landlord stated that the tenant cannot get along with others and that finding a compatible occupant is a challenge. The landlord has found friends of the tenant staying in the second bedroom and believes the tenant has collected rent from these individuals. This was disputed by the tenant.

Analysis

While the landlord may have been motivated to assist the tenant in making her rent payments, I find that the terms of the written tenancy agreement were altered in August 2009 when the landlord verbally agreed to have a second occupant move into the rental

unit. Both parties agreed to this change of terms, as provided under section 14 of the Act.

I find that in August 2009 the landlord entered into a separate verbal tenancy agreement with a male occupant. This occupant did not rent the second bedroom under the same tenancy agreement as the tenant and, I find, that the landlord had created a tenancy in common, where the two occupants shared the premises within separate verbal tenancy agreements with the landlord. I base this decision on the testimony of the landlord, who confirmed that she had a verbal arrangement with the new occupant, on the absence of any responsibility of the tenant to collect rent and the fact that rent payments were made by the occupant directly to the landlord.

I find that the newspaper advertisements demonstrate the intention of the tenant to accept a tenant in common and the landlord's intention to seek a second occupant, which would result in a net rent increase the sum of \$150.00. The landlord retained the right to screen all potential occupants, made the verbal agreement with the occupant and collected the rent; which I find excluded the tenant from any responsibility for the rental of the second bedroom.

I have rejected the submission that the tenant was responsible for identifying prospective occupants and that any failure to do so would result in her rent reverting to \$650.00 per month. Section 6 of the Act requires that all tenancy agreement terms be expressed in a manner that clearly communicates the rights and obligations under the agreement. I find the expectation that rent owed could potentially fluctuate, depending upon the number of people in the rental unit, fails to provide clear and enforceable terms.

Based upon their verbal agreement which altered the terms of the tenancy, the tenant was allowed to pay \$400.00 rent for 5 months. In January 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent in the sum of \$250.00; the difference between the \$400.00 paid and the amount of rent originally payable under the written tenancy agreement. This Notice assumed that the rent owed would fluctuate, depending on the presence of another occupant; even though the tenant had been allowed to pay \$400.00 per month during the previous 2 months when a second occupant had not moved into the unit. I find that this is contradictory and further confirmed the verbal terms agreed to in August 2009.

I find that the tenant's notice to end tenancy issued on November 18, 2009 is of no consequence to the tenancy. The tenant remained in the unit and paid rent.

Therefore, based upon sections 6 and 14 of the Act, I find that the tenant will continue to pay \$400.00 rent to the landlord, due by the first day of each month. The landlord is at liberty to identify a tenant in common for the second bedroom. The tenant is reminded that any occupant of the second bedroom is entitled to the same rights as she is; such as the right to quiet enjoyment of the rental unit. The tenant has no right to allow others to stay in the second bedroom or to use that room; as the tenant is not paying to rent

the second bedroom. All areas outside of the bedrooms will continue to be common area within the rental unit, to be shared by the tenant and any occupant of the second bedroom. The tenant, at the landlord's discretion, may assist the landlord in identifying possible occupants, but will have no authority over the landlord's choice of occupant.

I have found that the tenancy agreement was altered and that, effective August 2009 the rent owed was \$400.00 per month; therefore, 10 Day Notice to End Tenancy issued on January 4, 2010 is of no force or effect. This tenancy shall continue. The landlord is entitled to cash the cheque held for February rent owed and the tenant must immediately pay the balance owed in the sum of \$25.00. Once the \$25.00 is paid the landlord will not be owed any rent arrears.

The landlord will continue to retain the deposit paid, in trust. The deposit is to be disbursed as required by section 38 of the Act.

As the landlord's Application does not have merit I decline to award the filing cost.

Conclusion

The 10 Day Notice to End Tenancy issued on January 4, 2010 is cancelled and of no force or effect. The tenancy will continue.

The tenancy agreement has been altered, allowing the tenant to pay \$400.00 per month rent, which must be paid by the first day of each month.

The landlord will continue to have the right to identify tenants in common for the second bedroom.

The landlord has been paid January 2010 rent owed.

The landlord will continue to hold the deposit paid, in trust.

The tenant's Application to cancel the Notice was dismissed with leave; however, as the tenant did apply to cancel the Notice within 5 days of receiving the Notice. I have found, as part of the landlord's Application that the Notice is of no force or effect.

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: February 15, 2010.

Dispute Resolution Officer