



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *OPR, OPC, CNR, MNR, FF*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenancy agreement filed into evidence shows that the landlord entered into a tenancy agreement with her co applicant who is listed as the landlord's agent. The tenancy agreement allows the tenant to sub let the unit. This dispute is between the tenant and his subtenants and therefore the landlord is not a party to this dispute. The tenant DS is the landlord of the sub tenants and will be referred to as DS from here on.

The tenant (DS) sub let portions of the home to different sub tenants who paid varied amounts of rent directly to DS. The subtenants have separate agreements with the landlord and therefore fit the definition of "*tenants in common*". A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy and is not responsible for the debts or damages relating to the other tenancies.

In this case, there are several sub tenants and the for the purpose of this hearing, I will name the respondent as the person whose name appears on the notice to end tenancy and the applications for dispute resolutions applied for by both parties. DS is at liberty to file separate applications against his other sub tenants. The sub tenant that will be a party to this hearing is LC.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The landlord and tenant entered into a verbal tenancy agreement. The rent is \$650.00 due on the first of each month. DS stated that the sub tenant did not pay full rent on November 01, 2010 and owes \$535.00. On November 06, DS served the sub tenant with a notice to end tenancy for non payment of rent. DS stated that the sub tenant did not pay rent and continues to reside in the rental unit.

The sub tenant stated that he paid his rent to DS in the presence of a witness.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The subtenant stated that he had paid rent to DS in cash but did not have any supporting evidence. DS denied having received rent from the sub tenant.

In this case without any additional evidence to prove that he paid rent, I have to accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy on November 06, 2010 and did not pay overdue rent as of the date of this hearing. Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the sub tenant. This Order may be filed in the Supreme Court for enforcement.

I find that DS has established a claim of \$535.00 for unpaid rent. Since DS has proven his claim, he is also entitled to the recovery of the filing fee of \$50.00.

I grant DS an order under section 67 of the *Residential Tenancy Act* for the amount of **\$585.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant DS an order of possession effective two days after service on the sub tenant and a monetary order in the amount of **\$585.00**.

The sub tenant's application is dismissed in its entirety.

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: December 01, 2010.

Dispute Resolution Officer