



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, OPR, MNR, ET

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlord for an order of possession, a monetary order and an order ending this tenancy early. Both parties participated in the conference call hearing.

At the hearing the landlord asked to introduce evidence of the tenant's behaviour. I advised the landlord that the hearing dealt exclusively with unpaid rent and refused to hear that evidence as it was irrelevant. After the hearing I realized that the landlord had applied not just for an order of possession and a monetary order, but also had requested an early end to tenancy, which I had earlier overlooked on her application. The request for an early end to tenancy was improperly paired with the other two claims and needed to be heard as a separate claim. The claim for an early end to tenancy is dismissed with leave to reapply.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agreed that the tenancy began in 2008. At that time, the landlord filled out a Shelter Agreement for the Ministry of Employment and Income Assistance (the "Ministry") stating that the tenant's share of the rent was \$375.00 per month. The landlord testified that she entered into a series of written tenancy agreements with the tenant and that these agreements made the tenant liable for \$650.00 per month in rent and named various roommates as parties to the agreements. The landlord did not enter a copy of the tenancy agreements into evidence and the tenant denied having signed any such agreements. The tenant testified that throughout the tenancy he has only been responsible for \$375.00 in rent and that the landlord rented out rooms in the rental

unit to other tenants who would pay her separately. The landlord acknowledged that the tenant's roommates paid her separately but insisted that those roommates were on a tenancy agreement as co-tenants with the tenant.

The landlord acknowledged having received \$375.00 in rent for the month of January paid directly from the Ministry. The landlord testified that the tenant's roommates, who are her grandchildren, moved out of the rental unit in late December or early January and claims that the tenant is responsible for the \$275.00 in rent they would usually have paid.

The parties agreed that the tenant was served with a 10 day notice to end tenancy for unpaid rent on January 2 when the landlord posted the notice to his door. The notice alleges that the tenant has failed to pay \$275.00 in rent.

The tenant testified that he does not believe he should be responsible for the portion of the rent usually paid by his roommates, but stated that he would be willing to assume responsibility for the tenancy and pay the full \$650.00 per month in rent required by the landlord. The tenant testified that he attempted to pay \$275.00 to the accountant at the corporate landlord's office but was advised that the landlord's agent, C.C., had directed the accountant not to accept rent. C.C. denied having given the accountant these instructions and insisted that the accountant told the tenant to pay C.C. directly.

The tenant testified that he attempted to pay C.C. but she refused to accept rent and further testified that on January 7 he obtained a money order for the amount owing by the roommates and attempted to pay C.C. but again she refused to accept rent.

C.C. testified that the tenant at no time offered to pay \$275.00 and that she did not refuse to accept rent from him. C.C. acknowledged that on January 5 when the police were in attendance at the rental unit she told the police she would not accept rent from the tenant, but at the hearing C.C. insisted that she meant that she would not accept rent on that date because she was angry with the tenant.

Analysis

In order to establish grounds to end the tenancy the landlord must prove the amount payable under the tenancy agreement and must prove that the tenant failed to pay that amount in full. I find that the landlord has failed to prove that the tenant is jointly and severally liable for the portion of rent generally paid by the roommates. There are a number of factors which militate against such a finding. The landlord did not provide a tenancy agreement showing that the tenant was jointly and severally with these parties, the most recent roommates are the grandchildren of the landlord's agent and the rent

was paid directly to the landlord. I find that the tenant cannot be held responsible for their portion of rent. I find that the tenant is responsible to pay just \$375.00 per month for his room and the common areas of the residential property and I find that this amount was paid in full for the month of January. I therefore dismiss the notice to end tenancy and declare it to be of no force or effect. As a result, the tenancy will continue.

The landlord's application is dismissed.

Conclusion

The notice to end tenancy is set aside.

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 08, 2011

Residential Tenancy Branch