



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for unpaid rent, and to recover the filing fee for this application. At the outset of the hearing the landlord withdraw her application for an Order of Possession

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the female tenant on March 11, 2011. The tenant was deemed to be served the hearing documents on March 16, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The female tenant and the landlord 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:

Issue(s) to be Decided

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

Background and Evidence

The landlord testifies that this tenancy started on July 01, 2010. The tenancy agreement was signed by both tenants. Rent for this unit was initially agreed to be \$800.00 but was later reduced to \$550.00. The tenant's paid a security deposit of \$225.00 and a pet deposit of \$50.00 on June 26, 2010.

The landlord testifies that this is the upper unit in the house and the female tenant actually resided at the lower level but rented both levels and was responsible for the rent. The male tenant living in the upstairs unit moved out in October 2010 and the landlord claims the female tenant has sublet the unit to a new tenant on November 01, 2010 and did not provide the landlord with the correct name for the new tenant.

The landlord testifies that the female tenant told her that when the old tenant moved out she would keep the unit to put in a live in nanny for her children but instead she sublet it to a new tenant for \$700.00 per month. The landlord states the female tenant asked her for a new lease for this sub-tenant but gave her the wrong name. She states when she spoke to the new tenant living in the upper unit in March, 2011 he told her he had been paying the female tenant \$700.00 per month since November, 2010 for rent and utilities and only two payments for this unit of \$550.00 for November, 2010 and January 2011 have been paid into the landlords bank account by the female tenant.

The landlord testifies that the tenant has failed to pay all the rent for this upper unit. The landlord states the tenant gave her a cheque in September, 2010 for \$550.00 but this payment was NSF on two occasions. On October, 2010 the tenant paid rent for this unit of \$250.00 by cheque and \$300.00 cash but the cheque was returned NSF. On October 21, 2010 the tenant paid \$200.00. This left an outstanding amount of \$600.00 for September and October, 2010. On November the rent of \$550.00 was paid but no rent was paid for December. Rent for January, 2011 was paid but no rent was paid for February, 2011 and no rent has been paid for March, 2011. The landlord states the total amount of outstanding rent as of March, 2011 is \$2,250.00 for the upper unit.

The tenant disputes the landlords' claims. The tenant testifies that her name was only on the lease for the upper unit as the tenant was mentally challenged and could not rent the unit unless she put her name on the lease. She states she has never lived in that unit but resided in the lower unit. The tenant agrees that this tenant moved out and agrees she did pay his rent for November, 2011. She states the landlord advertised the unit for rent and spoke to the new tenant for the upper unit. The tenant states she did not know this tenant and did not sublet the unit to him. She states as of November 01, 2010 she had nothing to do with the upper unit and it

became the landlords' responsibility. The tenant testifies if any rent for the upper unit was paid to the landlord it was not paid by her as she never received any rent from the tenant living in the upper unit.

The tenant agrees she did speak to the landlord about keeping the upper unit on for a nanny but by the second week in October, 2010 she told the landlord she was no longer interested and claims to have put this in writing to the landlord to end her responsibility for the upper unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. When tenants signs a tenancy agreement they are bound by that agreement until such a time as written Notice to end the tenancy is given to the landlord. In this case I find it is likely that the tenants rented the upper unit and when the male tenant moved out the female tenant sublet it to the new tenant as in a previous hearing the tenant agreed she did pay rent for that unit for October, 2010 after the other tenant had moved out and in this hearing she agreed she paid rent for November, 2010 for this unit. I also find there is no evidence from the female tenant that she gave the landlord notice to end tenancy on the upper unit after the first tenant moved out. When one tenant moves from a rental unit the other tenant remains equally responsible for rent for that unit if proper Notice was not given to the landlord to end the tenancy as co-tenants are jointly and severally liable for any debts or damages relating to the tenancy.

The landlord argues that the female tenant organized the new tenants' tenancy and collected rent from him, as two months' rent was paid into the landlords' bank account and the female tenant was the only tenant who had the details of the landlords' bank account. The tenant argues that this was not the case and after November 01, 2010 she had nothing to do with the upper unit or the new tenant residing there.

It is my decision, on a balance of probability, the tenant did sublet the upper unit to this new tenant and as a result she became the new tenants' landlord and she remains as a tenant to this landlord. In any event as the tenant has provided no evidence that notice to end the tenancy was given to the landlord for the upper unit before November 01, 2010. I also find the landlord evidence more credible that the female tenant was the only person who had her bank account

details so it is also likely that it was this tenant who paid rent into the landlords' bank account. Consequently, I find the tenants have not given Notice to the landlord to end the tenancy of the upstairs unit and therefore they remain responsible for the rent for that unit and the landlord is entitled to recover unpaid rent of **\$2,250.00** from the tenants pursuant to section 67 of the *Act*.

As the landlord has been successful with her amended claim I find she is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

If the female tenant finds the tenant living in the upstairs unit has failed to pay his rent to her as his landlord she is entitled to serve him with a 10 Day Notice to End Tenancy and should be dealt with under s. 46 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,300.00**. The order must be served on the respondents 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: April 06, 2011.

Residential Tenancy Branch