



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent 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*, sent via registered mail on June 11, 2011. Mail receipt numbers were provided by the landlord in evidence. The tenant was deemed to be served the hearing documents on June 16, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord testifies that the person named on this application is the occupant of this rental property but this person has never entered into a tenancy agreement with the landlord either written or verbal. The person named on the original tenancy agreement has sublet this rental unit to this occupant without the landlords' permission or consent. Rent was and remains

\$1,450.00 per month and the landlord continues to hold a security deposit of \$725.00 paid by the previous tenant on September 1, 2010.

According to the landlord, the tenancy began with the original tenant on September 1, 2010 under a fixed term rental agreement which was supposed to run until August 31, 2011, however, the landlord has not submitted a copy of the rental agreement into evidence.

The original tenant gave the landlord written notice on December 28, 2010 that she would be leaving on January 31, 2011 and expressing the expectation in this letter that the landlord would be able to find a new tenant quickly.

Without the knowledge or consent of the landlord, the tenant entered into a sub-tenancy agreement with the present occupant who paid her a security deposit of \$725.00. The landlord testifies that the previous tenant gave him a cheque for the rent for February, 2011 for \$1,450.00 and also gave him 11 more post-dated cheques for the subsequent months. The landlord states as he did not give permission for this occupant to live in the rental unit he marked the receipt for this money for occupancy only. The landlord states when he went to the rental unit to speak to this occupant she had already moved in and had unpacked her belongings.

The landlord testifies that the occupant filled in an application form to take over the tenancy but when he did the credit checks he found she was unsuitable as a tenant and did not agree that she could take over this tenancy. The landlord testifies that he attempted to cash the next rent cheque as this occupant continued to reside in the rental unit but was told at the previous tenants' bank that there were no funds available in her account. The landlord testifies that he attempted to get rent from the occupant for occupancy only but despite promises to pay the rent she failed to do so.

The landlord testifies that he is now owed the sum of \$5,800.00 in unpaid rent for March, April, May and June, 2011 and seeks a Monetary Order to recover this sum from the occupant. The landlord also seeks an order of Possession.

Analysis

I have reviewed the documentary evidence before me and the landlords' testimony. In Order to determine whether or not I have jurisdiction in this matter I must establish that a tenancy agreement exists. The landlord has testified that there is no tenancy agreement in place for this occupant either written or verbal and testified that he has never given permission for this occupant to take over the tenancy of the previous tenant. Therefore, when no tenancy arrangement has been established between the Parties it is my decision that I do not have jurisdiction in this matter. I find that this appears to be the case of this occupant squatting in the premises without permission from the landlord and without paying rent and the landlords' recourse would be to contact the Police in this matter.

If the previous tenant has sublet without the landlords' permission and ended the tenancy before the end of the fixed term I would suggest the landlord file another application against the previous tenant and serve her with any relevant documentation.

Conclusion

As no tenancy agreement has been established between these Parties named on this application I decline jurisdiction in this matter and the landlords' application is dismissed.

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: July 04, 2011.

Residential Tenancy Branch