



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for unpaid rent.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

It should be noted at the outset that the rental unit is a condominium in a strata property complex, and that a number of strata lots went into receivership in February 2010. The solicitor for the Receiver of the assets of real property holdings was in attendance to confirm that their client was not a receiver of the landlord's rental unit. He pointed out that the landlord wrongfully named D.E., a senior manager of his firm, as tenant in the application for dispute resolution.

I accept that the landlord named two tenants: P.D and D.E as tenants, and that upon review of the tenancy agreement and the above clarification that only P.D. is considered the respondent in this application.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Background and Evidence

In her documentary evidence, the landlord provided a copy of the fixed term tenancy agreement entered into with an entity identified as a community association. P.D. represented the association and signed the agreement. The landlord does not reside in this province; the parties understood that P.D. would not be the tenant living in the rental unit, and that P.D. would sub-let the unit. The tenancy started October 1st, 2009

and was to end September 30th, 2011. The rent was \$1367.00 per month and the tenant paid a security deposit of \$683.50.

The landlord testified that the sub-tenants left at the end of November 2010. She discovered that P.D left when a receiver took possession of a number of strata lots in February 2010. She said that she hired the resident property manager to find new tenants, and that she advertised immediately. The landlord said that the property manager found new tenants for March 2011 at a rate of \$1035.00 per month.

The landlord's claim is as follows:

- Loss of rental income from December 2010 to March 1st, 2011: \$4101.00
- Loss of \$332.00 in rental income from March to September 2011: \$2324.00
- Total loss: \$6425.00

P.D. testified that he was directed by the receiver to leave the complex as of February 2010, and therefore the responsibility over this tenancy had shifted over to the receiver. He said that he had no knowledge of the outcome with the landlord until receipt of the application for dispute resolution. P.D. acknowledged that he had electronic correspondence with the landlord in late November and that he advised the landlord to contact the receiver. The landlord said that the receiver informed her that this tenancy was not part of the real property holdings named in the receivership.

Analysis

Section 6(1) of the Act states in part that; the rights, obligations and prohibitions under the Act are enforceable between a landlord and a tenant under a tenancy agreement. I find that P.D. entered into a tenancy agreement with the landlord. Although the tenant operated under an association, I have no documentary evidence that the association in question was incorporated, or operated as a registered business entity. Therefore I find it appropriate that I name P.D, and not the association, as the actual tenant.

Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The landlord was not provided with that notice. I find that the tenant undertook to sub-let the unit. The fact that P.D. was directed to leave the strata grounds by the receiver did not discharge his obligation as tenant towards the landlord. Although I have no evidence

of a written sub-lease agreement, the original lessee, in this case P.D., remains the tenant.

When P.D. left without properly notifying the landlord i find that he failed to comply with section 45(2). Therefore the tenant is entitled to recover the loss of rental income as claimed.

Conclusion

The landlord established a claim of \$6425.00. I authorize the landlord to retain the tenant's \$683.50 security deposit and pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$5741.50.

This Order may be registered in the Small Claims Court and enforced 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: January 16, 2012.

Residential Tenancy Branch