



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 was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, provided evidence in advance of the hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on October 7, 2011, the tenant did not attend. The landlord provided evidence of mailing the documents by registered mail, and I find that service upon the tenant has been effected in accordance with the Residential Tenancy Act.

All evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord testified that the rental unit had been rented by a long term tenant who had entered into a number of fixed term tenancies over several years, however, this tenant is not the named tenant in the landlord's application. The tenant also had a niece residing in the rental unit who is also named as a tenant on the tenancy agreement. Rent in the amount of \$865.00 was payable in advance on the 1st day of each month.

The tenant's daughter called the landlord stating that the tenant was ill and she was taking the tenant back to Quebec, however the niece would still be residing in the rental unit, but told the landlord that she would not be renewing the lease when it expired at

the end of August, 2011, and the landlord expected vacant possession on August 31, 2011.

The niece subleased a room to another person without the landlord's knowledge. This person is the subject of this dispute and is named by the landlord in the Application as the tenant. In mid-August, 2011, the landlord learned from a property manager that there was an unknown tenant residing in the rental unit. The landlord went to the rental unit and the tenant (niece) had moved out most of her possessions, and the landlord was only able to speak to the person who was apparently subleasing a room. This tenant advised that the niece said that the rental unit was a long-term rental, and the tenant wanted to stay, having been residing in the rental unit since mid-July, 2011. The landlord agreed to rent the unit to this new person, but on the conditions that a security deposit was paid and post-dated cheques for rent would be provided to the landlord. The landlord also explained that rent would be \$880.00. The security deposit has not been paid, and the landlord has not received any rent from anyone.

The landlord requests an Order of Possession and a monetary order for unpaid rent.

Analysis

In the circumstances, I find that the tenancy was conditional upon the new tenant providing a security deposit and rent to the landlord, which didn't happen. Therefore, I find that no tenancy agreement exists between the parties. The landlord had a tenancy agreement with another person, who was not served with notice of this application, and whether or not that tenancy is still in existence depends on what the tenancy agreement states. I have not been provided with a copy of the tenancy agreement, however, if it states that at the end of the fixed term the tenancy reverts to a month-to-month tenancy, and the tenant has not provided a full month of written notice to vacate the rental unit, presumably, it still exists. I refer to Residential Tenancy Policy Guideline 19, which deals with assignment and sublet, and states:

"A tenant may assign or sublet his or her interest in a tenancy agreement or lease with the consent of the landlord. If a tenant assigns or sublets a tenancy agreement without obtaining the landlord's consent, the landlord may serve a one month notice to end the tenancy under the Legislation – the tenant has purported to assign or sublet the residential premises without the written consent of the landlord.

"It is up to the original tenant to seek the landlord's consent – the proposed new tenant is not a party to the tenancy agreement until such time as the landlord has agreed to assignment or sublet, and the formal transfer is made."

Therefore, the person residing in the rental unit is either a squatter or a tenant of the landlord's tenant. The landlord is at liberty to issue a notice to end the tenancy to the tenant named in the tenancy agreement for subletting without the landlord's consent, and may apply for dispute resolution to request an Order of Possession. Further, if rent has not been paid, the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the tenant who has entered into a tenancy agreement with the landlord.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: November 07, 2011.

Residential Tenancy Branch