



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application for dispute resolution under the Residential Tenancy Act (the "Act") by the landlord for an order of possession, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and to recover the filing fee.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and to make submissions to me.

Issue(s) to be Decided

Has the tenant breached the Act or tenancy agreement, entitling the landlord to an order of possession, a monetary order and to recover the filing fee?

Background and Evidence

The landlord testified that there was a written tenancy agreement, but that he did not keep a copy of the agreement. The landlord later stated that he had a copy of the written tenancy agreement, but could not locate the copy.

The landlord further stated that he rents several properties, for which he keeps written tenancy agreements for a few months into the tenancy to see if there will be any problems, and then destroys the agreements.

I heard undisputed testimony that this month to month tenancy began on August 1, 2011.

The landlord submitted that the monthly rent is \$900.00 and the tenant countered by stating her portion of the rent was \$600.00 and her roommate's portion was \$300.00 as they had two separate tenancy agreements. The tenant submitted that her roommate occupied another bedroom, had a separate tenancy arrangement with the landlord and the landlord received two rent cheques from the separate tenants.

The landlord stated that the security deposit was \$450.00 and the tenant stated her security deposit was \$300.00 and her roommate's security deposit was \$150.00.

The tenant stated that she submitted two written tenancy agreements into evidence, but a review of those documents show that they were not tenancy agreements, but rather rental assistance forms, showing her portion of rent to be \$600.00 per month and her portion of the security deposit to be \$300.00.

Likewise the documents show that the rent obligation of the other party, classified by the landlord to be a tenant and by the tenant to be her roommate, to be \$300.00 per month and his portion of the security deposit to be \$150.00.

The parties agree that the other party occupying the rental unit vacated at the end of December 2011.

The landlord gave affirmed testimony and supplied evidence that on March 1, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by personal delivery, listing unpaid rent of \$900.00 as of March 1, 2012, and \$400.00 for a previous balance. The landlord explained that the rent balance was \$100.00 from January and \$300.00 from February.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice. I have no evidence before me that the tenant applied to dispute the Notice.

The landlord's monetary claim is \$2200.00, comprised of alleged unpaid rent for January for \$100.00, \$300.00 in February, \$900.00 for March and \$900.00 for April.

The tenant stated that she was obligated to pay \$600.00 per month and therefore was paid in full through until the end of February. The tenant acknowledged that she did not pay rent in March as the landlord gave her the Notice requiring her to leave, which she has now done.

The landlord acknowledged that the tenant had vacated the rental unit and is no longer in need of an order of possession.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Residential Tenancy Branch Policy Guideline 13 states that tenants in common share the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

In dealing with the agreed upon terms and services in a tenancy agreement, the onus is on the landlord to prove the terms and agreed upon at the commencement of the tenancy. I find that the landlord provided contradictory testimony as to the existence of a written tenancy agreement and as such, his credibility was called into question. As I informed the landlord, I could not ascertain which of his two versions of events to believe as whether or not a written tenancy agreement was prepared.

I therefore find on a balance of probabilities that the landlord did not prepare a tenancy agreement as required under Section 13 of the Act, and is therefore unable to prove that the tenant and the other party paying rent were joint tenants.

I accept the testimony and evidence of the tenant that she had a separate tenancy agreement with the landlord and I find that the tenant and her roommate were tenants in common and not joint tenants.

As such, I find that the tenant's rental obligation under a separate tenancy agreement was \$600.00 per month.

I next considered the issue of the Notice, which was issued March 1, 2012, listing unpaid rent of \$900.00 on March 1, 2012.

Apart from my finding that the tenant's monthly rent was \$600.00, I also find that as of the date the Notice was issued, March 1, there was not yet a rent deficiency for the rental unit for the month of March until March 2.

Additionally the landlord listed \$400.00 from a previous balance for unpaid rent, comprised of a rent deficiency of \$100.00 in January and \$300.00 in February; however the landlord confirmed receiving \$600.00 from the tenant in both January and February 2012. The tenant in common had vacated at the end of December and his rent of \$300.00 was not paid in January and February 2012, leading to the rent deficiency.

As such, I find that the tenant had paid her rent in full for January and February and therefore did not owe \$400.00 from a previous balance. I also find that the unpaid rent listed, \$900.00, to be both an improper amount as to the tenant and also not yet due.

I therefore find the 10 Day Notice to End Tenancy to be invalid and of no force or effect.

Having found the 10 Day Notice dated and issued by the landlord on March 1, 2012, to be invalid, I hereby cancel the Notice.

As to the landlord's application for a monetary order, I **dismiss** the landlord's for a monetary order for unpaid rent for January and February as I find the tenant paid in full.

Having determined that the tenant was a tenant in common with her roommate and that her monthly rent was \$600.00, I allow the landlord leave to reapply for unpaid rent in the amount of \$600.00 for March 2012, having made no specific findings as to the merits of that claim.

I declined to consider the landlord's request for loss of revenue for April, as the same was not yet due as of the day of the hearing and the landlord had not yet suffered a loss.

I also declined to consider granting the landlord an order of possession, due to the rental unit being vacant, as agreed to by the landlord.

As I have determined that the Notice was invalid, I decline to award the landlord to recover the filing fee.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent is hereby cancelled.

The landlord's monetary claim for unpaid rent for January and February is dismissed, without leave to reapply.

The landlord is granted leave to reapply for unpaid rent for March 2012, up to \$600.00 as to this tenant.

I have declined to consider the landlord's monetary claim for loss of revenue for the month of April.

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: March 28, 2012.

Residential Tenancy Branch