



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 5, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

At the start of the conference call the Tenant's request to adjourn the Hearing to another day, because she did not have time to get assistance from an Advocate, was reviewed. I find the Tenant was serviced the Hearing package in October 2012 which gave her ample time to arrange for a advocate and she had a support person in attendance at the Hearing; therefore I dismiss the Tenant's request for an adjournment and the Hearing proceeded as scheduled.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started on November 1, 2012 as a month to month tenancy with no written tenancy agreement. Rent was \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 on January 13, 2012.

The Landlord said the Tenant gave verbal notice on January 31, 2012 that she was moving out on February 1, 2012. The Landlord continued to say that the Tenant kept the keys to the unit until February 27, 2012 and she stored some of her belongings in the rental unit and she had access to the unit until February 27, 2012. The Landlord said he is claiming that the Tenant used the rental unit in February, 2012 and the Tenant did not give the Landlord proper written notice so the Landlord is requesting compensation for unpaid rent for February, 2012 in the amount of \$650.00.

The Tenant said that this tenancy is between her and her brother R.C. who has a written tenancy agreement with the Landlord. The Tenant said her brother R. C. sublet a room in the rental unit to her so he is her landlord not the owner of the rental unit B.B. The Tenant continued to say that she paid the security deposit and rent directly to the owner B.B. because the Ministry told her they would not pay the rent to R.C., because of issues between R.C. and the Ministry. The Tenant said the Landlord/ Owner B.B. has no claim against her. The unit is rented to her brother R.C. and she sublet a room from her brother R.C.

The Tenant said she does not believe she owes rent for February, 2012 because her brother told her she had to move out of the rental unit.

The Landlord B.B said that R.C. has had a number of other tenants in the room rented to this Tenant and the arrangement has always been the tenant paid the rent directly to the Owner/Landlord B.B. Landlord B.B. called R.C. as a witness.

Witness R.C. said that he made the arrangements for his sister the Tenant to move in, but the tenancy was with the Landlord/Owner B.B. R.C. said that he has a written tenancy agreement with the Landlord/Owner B.B. and he has been in the rental unit for over 4 years. All parties agreed that there was no written tenancy agreement for the Tenant K.C.

The Landlord said that this has been a difficult situation and he proposed that the Landlord keep the Tenant's security deposit of \$325.00 as full settlement of the unpaid rent for February, 2012 of \$650.00. The Tenant declined the proposal.

Analysis

Residential Tenancy Policy guideline #19 says:

Assignment

Assignment is the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. In a manufactured home site tenancy, an assignment usually coincides with the sale of the manufactured home.

The assignee takes on the obligations of the original tenant commencing at the time of the assignment, and is not responsible for actions or failure of the assignor to act prior to the assignment. Unless the landlord agrees otherwise, the original tenant may retain some residual liability, in the event of a failure of the assignee to carry out the terms of the tenancy agreement or lease.

Subletting

A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant **does not** take on any rights or obligations of the original tenancy agreement that are not contained in the subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

From the affirmed testimony and evidence that was submitted it is apparent that there is a written tenancy agreement between the Landlord/Owner B.B. and the Witness R.C. Consequently Witness R.C. has control of the rental unit and he determines who shall occupy the unit with the Landlord's agreement. As a result I find that the Tenant is a sub-tenant and the Witness R.C. is the landlord as he has control of the rental unit. As well I find that although the rent and security deposit was paid directly to the Owner this in itself does not establish a tenancy agreement between the Landlord/Owner B.B and the Tenant K.C. Consequently I find the Landlord has not established grounds to prove a tenancy exists between himself and the Tenant K.C. I find the Tenant K.C. is a sub-tenant and her tenancy is between her and the Witness R.C. Consequently as the Landlord did not establish that a tenancy exists between him and the Tenant the Landlord's application is dismissed with leave to reapply. The Landlord /Owner B.B. is at leave to make an application to recover the February, 2012 rent of \$650.00 from his tenant the Witness R.C. if the rent is unpaid.

As the Landlord has not been successful in this matter, he is ordered to bear the cost of the filing fee of \$50.00 that has already been paid.

Conclusion

The Landlord's application is dismissed with leave to reapply.

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*.

Residential Tenancy Branch