



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 was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession. The landlord also withdraws their application to keep the tenants security deposit as the landlord states no security deposit was paid at the start of the tenancy.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this property consists of two suites. The tenant rented the side suite originally and when the tenants in the main suite moved out the tenant moved into that suite but rented the whole house for \$1,500.00.

The landlord KL testifies that the tenant moved into the main suite on May 01, 2011. The landlord testifies that the tenant sublet the side suite and that party paid rent to the tenant. The landlord testifies that the tenant also rented out a trailer the tenant had on the property and collected that rent also. The landlord testifies that they did not have a written tenancy agreement in place with the tenant but rather all dealings were verbal or by text message. The landlord testifies that they have never had either a verbal or written agreement for the people living in the side unit.

The landlord testifies that the tenant failed to pay rent for October, November and December, 2012. There was also an outstanding amount owed from 2011. The landlord has provided a statement of rent paid and this shows that the tenant owes \$2,200.00 for 2011. However the landlord is willing to reduce this to \$1,500.00. The statement of rent document shows the tenant owes rent for 2012 of \$5,410.00; however the landlord is willing to reduce this to \$4,500.00.

The landlord testifies that the tenant was served with a 10 Day Notice to End Tenancy on December 05, 2012. This Notice was served in person to an adult residing in the rental unit. The Notice informs the tenant that they have five days to pay the outstanding rent of \$6,000.00, or dispute the Notice. If the tenant does not pay the rent or dispute the Notice the tenant must vacate the rental unit on December 18, 2012. The landlord testifies that the tenant moved from the rental unit sometime before the end of December, 2012 but failed to pay the rent owed. The landlord seeks a Monetary Order to recover the reduced amount of rent.

The landlord KL testifies that the tenant and her sublet tenants moved out of the rental unit and left the doors unlocked. The unit was left in an unclean condition with garbage everywhere. The landlord testifies that they have not been able to re-rent the unit due to the condition of the unit for January and the landlord seeks to recover a loss of rental income to the sum of \$1,500.00. The landlord testifies that the trailer that the tenant also rented out remains on the property. When the landlord spoke to the current occupiers of the trailer they told the landlord that they owned the trailer now and as they had paid rent to the tenant for January, 2013 they would move by the end of January, 2013. The landlord has provided photographic evidence of the rental unit in evidence.

The tenant disputes the landlords claim. The tenant testifies that she moved into the rental unit on July 01, 2011 and moved out on December 15, 2012. The tenant testifies that she does not owe any rent to the landlord for 2011. The tenant testifies that she paid the landlord 100.00 on July 01, 2011 and has a receipt for that amount. The tenant states she then met the landlord at his bank and paid \$800.00 in cash on July 15, 2011 but never got a receipt for that payment. The tenant agrees she has not paid rent for October, November and December, 2012. The tenant testifies that when she moved into the main suite her brother and his wife moved into the side suite. The tenant testifies that the landlord GL agreed that the rent would be split to \$900.00 for the main suite and \$600.00 for the side suite on August 10, 2011. The landlord GL also promised the tenant that he would bring separate tenancy agreement for both sets of tenants. The tenant testifies that as the previous tenants had left a mess she cleaned this up for the landlord and had a reduction of \$100.00 in her rent. The tenant testifies that as she is a truck driver she is away from home a lot and does communicate with the landlord through text messaging.

The tenant testifies that therefore her rent for October, November and December should be \$900.00 for each month as her brother's wife has paid the landlord the rent for the side suite. The tenant states the landlord cannot hold her responsible for someone else's rent as the tenant's agreement was to rent one suite not the whole house after her brother and his wife moved in.

The tenant testifies that when she left the property she did lock the doors and windows but when she returned to remove her belongings and clean the house the landlords had already taken possession of the house on December 28, 2012. The tenant testifies that this was why they could not clean the house, remove her belongings left or remove the garbage.

The tenant calls her witness who is the wife of the tenant's brother. The witness testifies that when they first moved into their suite it was not separate but later on when the tenant's brother lost his job they agreed to separate the suites. The witness testifies that they spoke to the landlord GL or the landlord's son KL and they agreed to let them separate the suites.

The witness testifies that they always paid their rent each month whenever the landlord came to collect it. The witness testifies that GL said he would write a tenancy agreement for them but he never did so. The witness testifies that it was always hard to get receipts from the landlord. The witness testifies that when they moved out, the tenant did not leave the doors and windows unlocked.

The landlord KL cross examines the witness and asks the witness that she mentioned that at first they were working together to pay the rent of \$1,500.00 and then they wanted to change this and have separate agreements. The witness replies that yes this was in the fall of 2011 and the witness replies that she spoke to the landlords father GL. The landlord asks the witness if they gave their rent to the tenant. The witness replies no. The landlord KL states he did not speak to this witness until 2012. The witness replies that she spoke to KL's father. The witness testifies that they paid all their rent of \$600.00 in cash from July 2011 till they moved out in December, 2012 but the landlord never gave the witness any receipts

The landlord GL testifies that he never agreed to separate the units. The landlord testifies that they cannot do this because there is only one gas and electric meter for the house. The landlord GL testifies that they did not know this when the tenant first rented just the side suite.

The tenant testifies that the landlord is contradicting himself. The landlord says they could not separate the suites because there was only one meter but he did rent them separately when the tenant lived in the side suite and other tenants' rented the main suite in 2010.

The landlord KL testifies that they would collect the rent from the tenants witness or the tenant's brother after they received a text message from the tenant because the tenant was hard to get hold off and was away from the property with her work.

The landlord GL testifies that the tenant did met him outside the bank and did pay the landlord cash of \$800.00 but this was in 2012 not 2011.

The tenant testifies that she has signed receipts from the landlord collectively from November 2010 to June 2011 for her rent for the side unit. The tenant testifies that since then she has signed receipts for the rest of 2011. Some are for \$1,500.00 and some are just for her share of the rent of \$900.00 with different receipts for the side units rent of \$600.00. The tenant testifies that she has signed receipts from the landlord for rent from January, 2012 to September, 2012 for most of her rent payments but not all of the side suites rent payments. The tenant was asked to provide these receipts in evidence at the end of the hearing. The tenant testifies that one of the receipts does have the witnesses name on it. The tenant failed to provide these receipts in evidence as directed to do so.

The witness is recalled into the hearing. The landlord cross examines the witness and asks the witness about the receipts and whether any were in the witnesses name. The witness replies that no they were all in the tenant's name. The landlord asks the witness that the tenant said she did not pay her rent for October, November and December, 2012. Who therefore did the witness pay her rent to? The witness replies that her rent was paid to the landlord KL at the beginning of December, 2012 but no receipt was provided. The witness later states under cross examination that she does not remember if the landlord gave the witness a receipt.

The tenant questions her witness and asks the witness if the witness can remember handing her rent to KL. The witness replies that she remembers doing so and asking for a receipt. The tenant asks the witness if the witness recalls when the tenant moved out, what did the witness ask the landlord. The witness replies that the landlord said to hang onto the rent till the landlord has done with FB (the tenant) and the landlord will give the witness a tenancy agreement for January 2013.

The landlord KL cross examines the tenant and asks the tenant why in the tenant's testimony the tenant stated that she had paid \$900.00 for August 2012 yet the landlord has provided evidence that the tenant paid \$1,500.00 by cheque for August 2012. The tenant replies that this cheque was for rent for July which was only paid in August.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and the witness, I find there are many contradictions between both parties testimony and that of the witness. However the tenant agrees that she owes rent of \$900.00 for October, November and December, 2012. The landlord argues that the tenant owes more rent and the tenant rented the whole house for \$1,500.00 and not just one suite for \$900.00. In this matter the burden of proof falls to the landlord to show that the tenant owes rent for 2011 and 2012. I find the landlords statement of rent to be irregular with the other documentary evidence presented. Therefore with regards to the landlords claim for unpaid rent for 2011; a party has an obligation under s. 7(2) of the *Act* to mitigate their loss and this includes an obligation to bring a claim in a timely manner. As the landlord failed to give the tenant a 10 Day Notice in 2011 I find the landlord has not mitigated his loss for any unpaid rent for 2011 and has not shown that

rent is owed for this year. Consequently this section of the landlords claim is therefore dismissed.

I have reviewed the documentary evidence provided concerning unpaid rent for 2012. The tenant and her witness have testified that the landlord GL agreed to separate the two suites. The tenant states the landlord agreed to do so in August 2011 and the tenants witness states the landlord agreed to do so in the fall of 2011. The burden of proof in this matter falls to the person making the claim. As the tenant is claiming the landlord agreed to separate the two suites, the burden of proof therefore falls upon the tenant. The tenant testifies that this was a verbal agreement however by their very nature verbal agreements are difficult for a third party to interpret and therefore without any further corroborating evidence I find the tenant has not met the burden of proof that the landlord agreed to separate the two suites. It is not enough for the tenant to assume the landlord has given permission to separate the suites without getting written permission to do so before subletting the side suite. Therefore, I find the tenant is responsible for the rent of \$1,500.00 as originally agreed.

With this in mind the burden of proof now falls to the landlord to show that the tenants witness did not pay rent \$600.00 for October, November and December as testified. The landlord's statement of rent shows the rent being paid into the landlord's bank on dates throughout the year with no payments recorded for the last three months of 2012. Therefore I find it unlikely that the tenant or the tenants witness paid rent for October, November or December, 2012 and I find the landlord is therefore entitled to a Monetary Order to the sum of **\$4,500.00**.

With regard to the landlords claim for a loss of rental income for January, 2013 of \$1,500.00; I have considered the landlord's photographic evidence and the tenants testimony that she returned to the rental unit on December 28, 2012 to clean and remove her belongings. However, when a tenancy has been ended by the landlord for unpaid rent and a 10 Day Notice has been issued to a tenant; the tenant must either, pay the rent, dispute the Notice or move out on the effective date of the Notice. As this

Notice had an effective date of December 15, 2012 I find the tenant should have moved out, removed her belongings and any garbage and cleaned the rental unit by this date. As the tenant states when she returned to the rental unit on December 28, 2012 the landlord had gained possession of the unit it is my decision that the tenant was not entitled to return to the unit after she had vacated on December 15, 2012 as the tenant testified. A landlord is entitled to gain possession of the rental unit once the tenant has moved out and removed substantially most of her belongings.

Consequently I find the tenant left the rental unit in an unclean condition after she vacated on December 15, 2012 and the landlords are unable to re-rent the unit due to this condition for January, 2013. The landlord has therefore established their claim for a loss of rental income for January, 2013 to the sum of **\$1,500.00**.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover the **\$100.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order pursuant to s. 67 and 72(1) has been issued to the landlord for the following sum:

Unpaid rent for three months	\$4,500.00
Loss of rental income for January 2013	\$1,500.00
Filing fees	\$100.00
Subtotal	\$6,100.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,100.00**. The order must be served on the Respondent and is enforceable through the Provincial Court 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 21, 2013