



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, MT, RR

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together.

The landlord's application is a request for an order of possession based on a notice to end tenancy for nonpayment of rent, and a request for a monetary order for outstanding rent, and recovery of the \$50.00 filing fee

The tenant's application is a request to cancel a notice to end tenancy.

Background and Evidence

The landlord testified that:

- A previous tenant was renting the whole house and then subletting to other tenants.
- This tenant at that time was one of the subtenants however when the previous Lease holder moved out he asked this tenant if he wanted to take over the whole lease and this tenant verbally agreed to do so.
- That meant that this tenant is now responsible for the full rent for the house and it is his responsibility to collect rent from his subtenants.

- This tenant has not been paying the full rent, and therefore the eviction notice was given.

The tenant testified that:

- He is not leasing the whole house he only leases a room in the house and his rent is \$350.00 per month.
- He never agreed to take over leasing the full house.
- He has paid his rent of \$350.00, in full, every month and therefore at this time there is no rent outstanding whatsoever.
- He is therefore requesting that the notice to end tenancy be canceled and that this tenancy continues.
- Since receiving the notice he has also paid his full December 2012, rent and January 2013 rent.

In response to the tenant's testimony the landlord stated:

- He has accepted some rent from the tenant for the months of December 2012, and January 2013, but it is not the full amount of the lease.

Analysis

The tenant has been living in this rental unit for some time and has been paying \$350.00 per month.

The landlord claims that the tenant agreed to take over the lease for the full house however there was nothing ever put in writing, and the tenant denies ever agreeing to take over the lease of the full house.

The burden of proving a claim lies with the person making the claim and when it is just the landlord's word against that of the tenant that burden of proof is not met.

Therefore this case it is my finding that the landlord has not met the burden of proving that the tenant ever agreed to rent the full house.

The tenant therefore, is only responsible for his room rent of \$350.00 per month, and since that rent is paid in full I will be setting the notice to end tenancy aside and this tenancy continues.

Conclusion

The landlord's application is dismissed without leave to reapply.

The notice to end tenancy dated November 12, 2012 is hereby canceled and this tenancy continues.

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 08, 2013.

Residential Tenancy Branch

