



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 26, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. He stated that no documents the Landlord wishes to rely upon as evidence were served at this time. The Tenant acknowledged receipt of these documents.

On April 28, 2015 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were not served to the Tenant. As the documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

On April 28, 2015 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally delivered to the Landlord's service address on April 28, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On April 28, 2015 the Tenant submitted a DVD to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that the DVD was not served to the Landlord. As the DVD was not served to the Landlord, it was not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for Unpaid Rent and to a monetary Order for unpaid rent?

Background and Evidence

The Landlord stated that he and his business partner, whom I will refer to as "A.R.", rent this residential complex from the owner of the property and that they sublet it to the Tenant and other occupants, with the knowledge and consent of the owner of the property.

The Landlord stated that the tenancy with this Tenant began on August 29, 2014 and the Tenant stated it began on August 28, 2014 or August 29, 2014. The parties agree that the Tenant agreed to rent a room in the lower level of this residential complex and that the Tenant shares some living areas with individuals who are also renting rooms in the residential complex under separate tenancy agreements with the same Landlord.

The Tenant stated that he entered into a written tenancy agreement with "A.R.", at which time "A.R." identified himself as the Landlord. The Tenant stated that he signed this agreement but "A.R." did not sign it in the Tenant's presence. He stated that he has asked for a copy of the agreement but has never been provided with a copy.

The Landlord stated that he understands "A.R." provided the Tenant with a copy of the tenancy agreement several weeks after the start of the tenancy. A copy of this agreement has not been accepted as evidence for these proceedings.

The Landlord stated that the first page of the tenancy agreement does not clearly identify the name of the Landlord. He stated that there is an addendum to the agreement that identifies him and "A.R." as the Landlord and which provides a service address for the Landlord, which is the same as the service address on the Application for Dispute Resolution. The Tenant stated that when he signed the tenancy agreement he was not shown an addendum and he did not receive a copy of the addendum.

The Tenant stated that he was originally told the room in the lower level rented for \$475.00 but he was subsequently told rent for that room was \$500.00. He stated that he agreed to pay rent of \$500.00 for the room; that he agreed rent was due by the first day of each month; and that he has paid rent in that amount since the start of the tenancy.

The Landlord stated that he was not present when the tenancy agreement but he understands the Tenant agreed to pay monthly rent of \$525.00 by the first day of each month.

The Tenant submitted a copy of an email, dated August 22, 2014, in which "A.R." informs the Tenant there is one room available for \$475.00; one for \$525.00; and one

for \$575.00. The Tenant submitted an email, dated August 22, 2014, in which he informs a third party that the room that was advertised for \$475.00 "became \$525.00" and the room that was advertised for \$500.00 "became \$575.00".

The Tenant submitted copies of three rent receipts in the amount of \$500.00. The parties agree that these receipts were provided to the Tenant by the Landlord when he paid his rent, in cash, for September, October, and November of 2014. None of the rent receipts indicate additional rent is due. The Tenant submitted a receipt for a damage deposit, in the amount of \$250.00.

The Landlord and the Tenant agree that the Tenant mailed cheques for rent for December of 2014, January of 2015, February of 2015, March of 2015, and April of 2015 to the service address provided by the Landlord. The Tenant stated that on, or about, February 04, 2015 he mailed a cheque for rent for February to the service address provided by the Landlord. The Landlord stated that he did not receive this rent cheque until February 17, 2015.

The Landlord and the Tenant agree that the Tenant made all of these cheques payable to the owner of the residential property. The Tenant stated that he did so because he was not satisfied that the Landlord had the right to collect the rent on behalf of the owner. He stated that he has never met the owner and that he was never directed to pay his rent to that party by either the Landlord or the owner.

The Tenant submitted an email from the Landlord, dated January 08, 2015, in which the Landlord told the Tenant he could pay rent by cash, money order, or cheque, and that any legal notices can be mailed to the service address used in this Application for Dispute Resolution.

The Landlord stated that the owner of the residential property has cashed the cheques on behalf of the Landlord and that he has now received rent money for the period ending April 30, 2015.

The Landlord stated that when this Application for Dispute Resolution was filed he had not yet received the rent money for December of 2014, January of 2015, February of 2015, or March of 2015 from the owner of the residential property, so he applied for a monetary Order for rent for those months.

It is not clear to me why the Landlord has applied for a monetary Order for \$3,775.00, given that only \$2,100.00 would have been due for those four months if the rent was \$525.00 per month and \$2,000.00 would have been due if rent was \$500.00 per month.

The Tenant stated that sometime in January of 2015 he moved out of the room in the lower level and into a room on the upper level. He stated that he after he moved into the room on the upper level he informed the Landlord of the move, either by sending him an email or by mailing a document to the Landlord. He is not certain how the

Landlord was notified of his move nor does he recall when the notification was delivered.

The Landlord stated that the Tenant never informed him that he had moved into a room on the upper level; that he did eventually learn that the Tenant had moved, although he cannot recall when; that he is not certain how he learned the Tenant had moved into the room on the upper level; that the Landlord never gave the Tenant permission to occupy that room; and that the room the Tenant moved into rents for \$550.00 per month.

The Landlord stated that on February 11, 2015 a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the exterior door of the residential complex. The Landlord stated that this Notice declared that the Tenant must vacate the rental unit by February 21, 2015. The Tenant stated that he has never received this Notice to End Tenancy.

The Landlord and the Tenant are seeking clarification on how much rent is due; whether the Landlord is entitled to collect rent from the Tenant; and specifically, what rent is due for May of 2015. At the hearing the Tenant was directed to immediately pay rent for May to "A.R.", in the amount of \$500.00.

Analysis

Section 1(c)(i) of the *Residential Tenancy Act (Act)* defines a "landlord" as a person, other than a person occupying the rental unit, who is entitled to possession of the rental unit and who exercises any of the rights under a tenancy agreement or the *Act* in relation to the rental unit. The Tenant submitted no evidence that causes me to conclude that the Landlord does not have the right to sublet the rental unit.

I find that the Landlord named in this Application for Dispute Resolution and an individual with the initials "A.R." are business partners. I find that the Landlord and "A.R." rent this residential complex from the owner of the property and that they sublet rooms in the complex to other occupants under separate tenancy agreements. This decision is based on the Landlord's undisputed testimony in this regard and on an email submitted in evidence by the Tenant, dated December 15, 2014, which serves to corroborate this testimony. I therefore find that the Landlord is a landlord as defined by the *Act*.

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with "A.R.", for a room in the lower level of this residential complex.

I find that the Landlord has submitted insufficient evidence to establish that rent for the room in the lower level was \$525.00, rather than \$500.00 as the Tenant contends. In reaching this conclusion I was influenced by:

- the absence of the tenancy agreement, which would serve to establish the amount of rent the Tenant agreed to pay;
- the absence of any documentary evidence that corroborates the Landlord's testimony that rent was \$525.00 or that refutes the Tenant's testimony it was \$500.00;

- the rent receipts, in the amount of \$500.00, none of which indicate additional rent is due; and
- the receipt for a damage deposit of \$250.00, which is typically 50% of the monthly rent.

Section 46 of the *Act* authorizes a landlord to end a tenancy if rent is not paid when it is due by serving a tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and that a landlord can end the tenancy on a date that is at least ten days after a tenant receives the Ten Day Notice to End Tenancy for Unpaid Rent. The burden of proving that a tenant receives the Notice to End Tenancy rests with a landlord.

On the basis of the testimony of the Landlord, I find that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the exterior door of the residential complex on February 11, 2015. I find that the Landlord submitted no evidence to show that the Tenant actually received this Notice to End Tenancy. On the basis of the testimony of the Tenant, I find that he did not receive the Ten Day Notice to End Tenancy. I find it entirely possible that both parties are being truthful in this regard, as it is possible that the Notice to End Tenancy was removed from the exterior door by a third party, who did not give it to the Tenant.

As the Landlord has submitted insufficient evidence to establish that the Tenant received the Ten Day Notice to End Tenancy for Unpaid Rent that was posted on February 11, 2015, I am unable to conclude that this tenancy has ended on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to 46 of the *Act*. I therefore dismiss the Landlord's application for an Order of Possession for Unpaid Rent.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, or 50 of the *Act*. As there is insufficient evidence to show that the tenancy ended in accordance with section 46 of the *Act* and there is no evidence to show that either party gave notice to end the tenancy in accordance with sections 45, 47, 48, 49, 49.1, or 50, I find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant vacated the room he was renting in the lower level of this residential complex. As neither party is certain when the Tenant moved from the room in the lower level of the complex to a room in the upper level, I am unable to conclude precisely when the tenancy ended. On the basis of the testimony of the Tenant, who stated that he moved sometime in January of 2015, I find it reasonable to conclude that the tenancy ended in January of 2015.

Section 1 of the *Act* defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a

rental unit and the use of common areas, services and facilities. I find the parties have not entered into a written or an oral tenancy agreement for the room on the upper level of this residential complex. In reaching this decision I was influenced by:

- the absence of any evidence to show that the Landlord agreed the Tenant could move into the room on the upper level;
- the Tenant's testimony that he did not ask permission from the Landlord to move into the room on the upper level before moving into the room;
- the Tenant's testimony that he informed the Landlord had had moved into the room after the move was complete;
- the evidence that shows rooms in this residential complex rent for varying rates; and
- the absence of evidence to show that the Landlord and the Tenant agreed on the rent due for the room on the upper level.

The tenancy agreement gave the Tenant the right to occupy a specific room in the lower level of the residential complex and to share common areas of the complex, such as the bathrooms, kitchen, and living room. The Tenant did not have the right to simply move from that specific room into another room in this residential complex. This would be similar to a tenant moving from one self-contained suite in an apartment building to another self-contained suite in the same building, without permission from the Landlord, and expecting that the tenancy would continue under the same terms. Given that the rooms in this residential complex rented for varying amounts, I find that it was unreasonable for the Tenant to assume that his tenancy agreement entitled him to occupy any room in the residential complex.

On the basis of the undisputed evidence, I find that all of the rent the Tenant agreed to pay for the period ending April 30, 2015 has now been received by the Landlord. I therefore dismiss the Landlord's application for unpaid rent for any period prior to April 30, 2015.

As the Tenant did not enter into a tenancy agreement with the owner of the residential property and he has never been directed by the Landlord or the owner of the residential property to pay his rent to the owner of the property, I find that the Tenant did not act reasonably when he paid rent to the owner. I find the communications at the start of the tenancy and subsequent emails exchanged between the parties were sufficient notice that the rent was to be paid to the Landlord or "A.R.".

I find that the Landlord acted reasonably when the Landlord filed this Application for Dispute Resolution in an attempt to resolve this dispute and I therefore find that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

As I have determined that the tenancy agreement for the room in the lower level of this residential complex ended in January of 2015 and there is no evidence that the Landlord and the Tenant have entered into a new tenancy agreement for the room in the upper level of this residential complex, **I find that the Tenant is occupying the upper level room and using the common areas of the complex without lawful authority.**

During the hearing I directed the Tenant to pay rent for May of 2015. This direction was given before I concluded that the Tenant did not have the legal right to occupy the room in the upper level of the residential complex.

In the event the Tenant has now paid rent for May of 2015, the Landlord may:

- refund the rent for May and direct the Tenant to vacate the residential complex immediately;
- permit the Tenant to occupy the room in the upper level until May 31, 2015 and then direct him to vacate the residential complex by May 31, 2015; or
- enter into a new tenancy agreement with the Tenant for the room in the upper level of the residential complex.

In the event the Tenant has not paid rent for May of 2015, the Landlord may direct the Tenant to vacate the residential complex immediately or to enter into a new tenancy agreement for the room in the upper level of the residential complex.

The Landlord has established a monetary claim for \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep this amount from the Tenant's security deposit. As this tenancy ended in January of 2015, the Landlord is required to comply with section 38 of the *Act* in regards to the security deposit as soon as he receives a forwarding address from the Tenant, in writing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 05, 2015

Residential Tenancy Branch

