



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, MNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- other remedies, identified as a declaration of whether this tenancy continues with a sublet or an assignment to new tenants;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, AW ("landlord"), the female tenant, CH ("tenant") and the male tenant, ZH ("male tenant") (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to represent her husband, "landlord RW," the other landlord named in this application, as an agent at this hearing. This hearing lasted approximately 52 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' Application.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' Application to increase the monetary claim from \$900.00 to \$1,800.00 to include February 2016 rent. The tenants consented to this amendment request by the landlord.

Issues to be Decided

Will this tenancy continue with an assignment or sublet to new tenants?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

Both parties agreed that this fixed term tenancy began on September 1, 2015 and is to end on June 30, 2016, after which it may continue on a month-to-month basis or another fixed length of time. Monthly rent in the amount of \$900.00 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was provided for this hearing.

Both parties agreed that the tenants vacated the rental unit on December 31, 2015. The tenants claimed that they bought a house and had to leave the rental unit. Both parties agreed that the tenants did not provide written notice to the landlords to end their tenancy. The tenant said that she provided an email to the landlord with options to end this tenancy, including a mutual agreement to end tenancy, an assignment or a sublet of the rental unit.

Both parties agreed that two new tenants ("new tenants") are now living in the rental unit. The tenant said that these new tenants moved in on January 1, 2016, while the landlord claimed that it was on December 31, 2015. The landlord claimed that on January 2, 2016 she found out that the new tenants had moved in but she was never asked permission by the tenants and she did not know ahead of time that they were moving in. The tenants said that they told the landlord about the new tenants moving in and that they altered the original tenancy agreement to include the names of the new tenants, while removing the names of the former tenants, in order to assign this tenancy to the new tenants.

The landlord stated that she did not agree to an assignment of this tenancy to the new tenants, only a sublet. She said that she does not have any knowledge of the new tenants, she has not conducted any reference checks and she does not know whether they will pay rent on time. She said that she wishes for the tenants to complete their fixed term until June 30, 2016, while subletting to the new tenants. The tenants state that the landlords must agree to an assignment of the tenancy under section 34 of the *Act* because the tenants cannot return to the rental unit or fulfill the obligation of the

tenancy agreement, and the tenants are attempting to mitigate the landlords' loss of rent. The tenant confirmed that she asked the landlord for criteria for suitable tenants, that she screened appropriate tenants and selected the new tenants who meet the landlord's criteria. She confirmed that the new tenants have contacted the landlord directly to offer reference information but the landlord has not responded. The landlord said that she advised the new tenants that this matter was in dispute so she wanted to wait for this hearing to take place.

The landlord confirmed that she received rent cheques for January and February 2016 from the new tenants but she did not cash them. Both parties agreed that the landlord then received a call from the new tenants to destroy the above two cheques because their banking information had changed. The landlord said that she destroyed the above two cheques and she has not been provided with any replacement cheques. The landlords seek unpaid rent of \$900.00 for each of January and February 2016, totalling \$1,800.00.

Analysis

Section 34 of the *Act* states the following:

Assignment and subletting

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

This fixed term tenancy is for a total term of longer than six months. The landlords agreed to sublet the rental unit to the new tenants, as per an email to the tenants and the landlord's verbal affirmed testimony during this hearing. The landlords are not required to assign this tenancy to the new tenants. I find that the tenants have not given written notice to the landlords to end their own tenancy in accordance with the *Act*.

Therefore, I find that this tenancy continues with the tenants as per the terms of the original written tenancy agreement until the end of the fixed term on June 30, 2016, unless it is ended prior to this date in accordance with the *Act*. I find that no further renewal of the tenancy can occur between the landlords and the tenants after June 30,

2016, on a month-to-month or a fixed term basis, as the tenants have already vacated the rental unit. I find that the tenants are ultimately responsible to fulfill their obligations as tenants under the original written tenancy agreement, including the payment of rent.

I find that the new tenants are permitted by the landlords to sublet the rental unit until the end of the fixed term on June 30, 2016, unless the sublet tenancy is ended prior to this date in accordance with the *Act*. I caution the landlords that if they want to continue the tenancy with the new tenants after the end of the fixed term on June 30, 2016, that the landlords will be required to enter into a new month-to-month or fixed term tenancy specifically with the new tenants, and that a written tenancy agreement may be signed to confirm this arrangement.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlords are entitled to \$1,800.00 for rental arrears for January and February 2016, from the tenants. I find that the landlords have destroyed the rent cheques previously provided to them by the new tenants due to a change in their banking information. The monetary order in this decision is made against the tenants, not the new tenants, as the tenants are still legally responsible to pay rent to the landlords under the tenancy agreement. However, I find that the landlords may accept rent from either the tenants or the new tenants to fulfill the terms of the tenancy agreement. The landlords are not permitted to refuse rent payments from either the tenants or the new tenants.

As the landlords were successful in this Application, I find that they are entitled to recover the \$50.00 filing fee from the tenants.

Conclusion

This tenancy continues with the tenants as per the terms of the original written tenancy agreement until the end of the fixed term on June 30, 2016, unless it is ended prior to this date in accordance with the *Act*. No further renewal of this tenancy can occur

between the landlords and the tenants after June 30, 2016, on a month-to-month or a fixed term basis.

The new tenants are permitted to sublet the rental unit until the end of the fixed term on June 30, 2016, unless the sublet tenancy is ended prior to this date in accordance with the *Act*. If the landlords want to continue the tenancy with the new tenants after the end of the fixed term on June 30, 2016, the landlords will be required to enter into a new month-to-month or fixed term tenancy specifically with the new tenants.

I issue a monetary order in the landlords' favour in the amount of \$1,850.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: March 4, 2016

Residential Tenancy Branch

