



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR CNR CNC OPC MNDC FF

Introduction:

Both landlord and tenant made Applications and attended the hearing. They confirmed the 10 Notice to End Tenancy dated October 4, 2016 to be effective October 14, 2016 was personally served. They confirmed the landlord's Application was served by registered mail and personally and the tenant's Application was served personally. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 or 47 and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- d) To cancel the Notices to End Tenancy for unpaid rent and for cause;
- e) An order to have the locks changed; and
- f) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

Or is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the original tenancy commenced in October 2013 with the tenant attending the hearing, that rent is \$1660 a month and a security deposit of \$800 was paid. It is undisputed that \$830 of October's rent remains unpaid. The tenant paid November's rent in full and the landlord issued a

receipt “for use and occupancy only” and not intending to reinstate the tenancy. The landlord claims \$830 rent arrears for October 2016 plus \$25 late fee. He said the late fee was in clause 10 of the lease but the tenant said she had no copy of those clauses.

Both parties agreed that the tenant has had a series of room mates since 2013, all of whom had joint tenancy agreements with her. On September 1, 2016, the present room mate moved in. She was a work colleague of the tenant and she introduced her to the landlord. This newest room mate signed a tenancy agreement but the original tenant did not sign and return it. The landlord said they expected it would be returned as usual in the past. The tenant said that the new room mate caused a lot of problems, then moved out and did not pay her half of October 2016 rent; she gave no notice to end her tenancy. She contends that she should not be responsible for the room mate’s actions as the room mate had a separate tenancy. She said the landlord collected half of the rent from each of them separately in cash; she never signed the latest tenancy agreement so she is not responsible. She said she was a good tenant who tried to solve any problems and she is being evicted because the landlord wants to rent the unit for more money.

In evidence are the Notice to End Tenancy for unpaid rent and a Notice to End Tenancy for cause. The tenant forwarded some late evidence today, mostly regarding ending her tenancy for cause. I decline to consider this as evidence pursuant to the Residential Tenancy Branch Rules of Procedure 3.14 must be provided at least 14 days in advance of the hearing and the landlord must have an opportunity to respond. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

I find the weight of the evidence is that the tenant had an ongoing tenancy agreement with the landlord whereby she was allowed to have several room mates over the years. Although she claims there was a separate tenancy between the room mate and the landlord because the landlord collected rent from each of them separately, I find her tenancy was joint as she was the person who invited various room mates to live with her and share her rent. I find that she cannot rely on the fact that she did not sign the latest tenancy agreement in September 2016 to negate her tenancy agreement with the landlord. According to section 1 of the Act, a tenancy may be oral, written or implied. I find the implication was that this tenant was continuing the same arrangement as she had since 2013 and shared with various room mates. I find, therefore, she is jointly and severally liable for the rent for the unit which she chose to share. Section 26 of the Act provides that rent must be paid on time and full rent for October, 2016 was not paid. While I respect the tenant’s counsel’s opinion that this tenant is not responsible for the

actions of her room mate, I find the Act in section 47 specifically states that tenants are responsible for the actions of themselves and anyone they invite on the premises. However this Decision is based on the violation of sections 26 and 46 of the Act as the full rent was not paid in full for the unit. I find it not necessary to consider the One Month Notice to End Tenancy for cause as the tenancy is ended pursuant to these sections. I find the landlord is entitled to an Order of Possession pursuant to section 46 and 55 as a portion of October's rent was not paid. The landlord requested the Order be effective January 31, 2017 so it is issued effective that date.

Monetary Order:

I find the landlord is entitled to a monetary order for \$830 for rent owed for October 2016 and to recover their filing fee. I find they are not entitled to the late fee of \$25 pursuant to section 7 of the Residential Tenancy Regulation as there was no written tenancy agreement in evidence and the tenant said she had no copy of the clause noted by the landlord.

I decline to order a change of locks as the troublesome tenant has vacated and this tenant's tenancy is ended with possession date of January 31, 2016.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply and I find she is not entitled to recover filing fees for her application due to lack of success.

I find the landlord entitled to an Order of Possession effective January 31, 2017 as requested and to recover filing fees for this Application. The security deposit remains in trust for the tenant.

Calculation of Monetary Award:

October rental arrears	830.00
Filing fee	100.00
Total Monetary Order to Landlord	930.00

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: November 24, 2016

Residential Tenancy Branch

