



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPU

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 03, 2019 (the “Application”). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 22, 2018 (the “Notice”). The Landlord also sought to recover unpaid rent and to keep the security deposit.

The Landlord and Tenant appeared at the hearing. The hearing process was explained to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and evidence. The Tenant confirmed she received the hearing package. She had not received the Landlord's evidence. The only evidence submitted by the Landlord were photos of the Notice and evidence regarding service. The Tenant confirmed she received the Notice.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to keep the security deposit?

Background and Evidence

The Landlord testified as follows in relation to a tenancy agreement. There is a verbal tenancy agreement between him and the Tenant. The Tenant moved into the rental unit with her partner and children as a family. Both the Tenant and her partner are tenants. The tenancy started September 20, 2018 and is a month-to-month tenancy. Rent is \$1,900.00 plus utilities and internet and is due on the first of each month. The tenants paid a \$1,000.00 security deposit.

The Tenant testified as follows in relation to a tenancy agreement. There was a verbal tenancy agreement between her and the Landlord. She was not with the other male when he rented the unit from the Landlord. The Landlord rented the unit to the other male first. She moved in in November of 2018. Her and the other male are not family and he is not her partner. Her and the other male have separate tenancy agreements with the Landlord and pay rent separately. The rental unit has five bedrooms and is two floors. The other male was living there when her and her children moved in. The other male lives upstairs but they do share the space and share bathroom and kitchen facilities. The other male pays \$1,900.00 to the Landlord. She pays \$1,900.00 in rent separately. Rent is due on the first day of each month. She did not pay her own security deposit as the Landlord never asked her for one. The security deposit held by the Landlord is from the other male. Her tenancy was month-to-month. She vacated the rental unit pursuant to the Notice on January 01, 2019.

The Landlord disputed that the Tenant had vacated the rental unit.

I asked the Tenant if she was agreeable to an Order of Possession issuing against her given she has vacated the rental unit. The Tenant confirmed she is agreeable to an Order of Possession issuing against her.

The Notice states the Tenant failed to pay \$4,000.00 in rent and \$370.00 in utilities due November 30, 2018. It is addressed to the Tenant and a third party. The Landlord has not included the last name of the third party. The first name included is different than the name of the other male who lives at the rental unit.

The Landlord testified that the Tenant and her partner paid \$1,700.00 September 18, 2018 which was \$1,000.00 for the security deposit and \$700.00 for pro-rated rent for September. He said the Tenant sent an e-transfer for \$2,000.00 on November 6, 2018. The Landlord testified that these were the only payments made.

The Landlord testified that between \$400.00 to \$500.00 in utilities is outstanding and that the agreement was that the Tenant and her partner would pay the utilities.

I asked the Landlord why the Notice states \$4,000.00 in rent is outstanding when rent is \$1,900.00 per month. The Landlord said this was a mistake. I asked the Landlord why the Notice states the \$4,000.00 was due November 30, 2018 when rent is due on the first day of each month. The Landlord said this was a mistake.

The Tenant denied there was outstanding rent when the Notice was issued. She testified that she moved in in November and vacated January 01, 2019. She testified that she paid rent for November and December. The Tenant submitted that the unpaid rent on the Notice relates to the other male and not her. The Tenant acknowledged sending the e-transfer for \$2,000.00 and said this was for rent and utilities.

The Tenant denied that she owes the Landlord for utilities. She said she put the utilities in her name when she moved in.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, the Landlord as applicant has the onus to prove the claim.

Policy Guideline 13 outlines the rights and responsibilities of co-tenants and tenants in common and states:

Tenants in Common

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy. In the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.

The parties gave conflicting testimony about the tenancy agreement in this matter. The Landlord submitted no evidence to support his position in relation to the tenancy agreement. In the absence of any evidence to support the Landlord's position, I am not satisfied the Tenant and other male are co-tenants under one tenancy agreement.

The Tenant agreed to an Order of Possession being issued in relation to her tenancy as she testified that she has vacated the rental unit. Therefore, I issue the Landlord an Order of Possession effective two days after service on the Tenant. This Order of Possession will apply to the Tenant and her children if they are still living at the rental unit.

Section 26(1) of the *Residential Tenancy Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

The parties gave conflicting evidence about whether there is outstanding rent and utilities. The Landlord submitted no evidence in support of his position that the Tenant failed to pay rent or utilities as required. In the absence of any evidence to support the Landlord's position, I am not satisfied the Tenant owes the Landlord outstanding rent or utilities. I decline to issue the Landlord a Monetary Order as requested. I decline to permit the Landlord to keep the security deposit. I also note that I am not satisfied the Tenant paid a security deposit or that the security deposit held by the Landlord relates to the Tenant's tenancy.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord's requests to recover unpaid rent and keep the security deposit are dismissed without leave to re-apply.

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: February 20, 2019

Residential Tenancy Branch