



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL / CNR, FFT

Introduction

This hearing dealt with two applications application pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:47 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified he served that the tenants personally with the notice of dispute resolution form and evidence on October 25, 2020. I find that the tenants were served with this package in accordance with section 88 and 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$1,800; and
- 3) recover the filing fee;

Are the tenants entitled to:

- 1) an order cancelling the notice to end tenancy; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting December 1, 2019. The tenancy agreement named two other individuals (who are not parties to these applications) as tenants ("**ST**" and "**GL**"). The tenancy agreement was to rent a single detached home. Monthly rent was \$1,800, payable on the first of each month. The tenants paid the landlord a security deposit of \$900 at the start of the tenancy.

The landlord advised me that ST and GL resided in the main house and the tenant RC and SS resided in the laneway house. Each pair were responsible for paying \$900 of the monthly in rent. They paid these amounts separately to the landlord via etransfer.

The landlord testified that he was notified by the city in the summer of 2020 that the laneway house was not proper accommodation for tenants and that it would have to be vacated. He advised all the tenants of this and told them that he would not expect RC and SS to pay their share of the rent for the month of August 2020 (\$900 dollars) as they would need to look for a new home.

The landlord testified that RC and SS did not find a new home and have remained in the laneway house until present date. He testified that they have not paid their share of monthly rent for August, September, October, November, and December 2020, or January 2021. ST and GL have paid \$900 each month during this time. He also testified that upon learning that RC and SS would have to vacate the rental unit, ST and GL agreed to assume RC and SS's portion of the monthly rent. However, they did not follow through on this agreement.

He testified that he served a notice to end tenancy for non-payment of rent on tenants RC and SS on October 9, 2020 claiming August, September and October arrears of \$2,700 (the "**October Notice**"). Additionally, he testified that he served another notice to end tenancy for non-payment of rent on GL and ST on November 16, 2020 claiming arrears of \$2,700, representing tenants RC and SS's arrears (the "**November Notice**").

The landlord applied for an order of possession and monetary order for the rental unit via direct request based on the November Notice. This relief was granted in a decision made December 22, 2020. The adjudicator dismissed the claim against ST for lack of proof of service. However, she ordered that GL pay the landlord \$2,800 (the arrears plus the \$100 filing fee) and ordered that GL and any other occupants of the rental unit "deliver full and peaceable vacant possession and occupation" of the rental unit to the landlord within two days of service of the order on GL.

This decision or the orders attach did not make any distinction between the main house and the laneway house. It referenced only the civic address of the rental unit, which is the address for both the main house and the laneway house. The tenancy agreement did not make any distinction between the main house and the laneway house, and only set out that the four named tenants were renting the entire property.

Analysis

Despite GL and ST occupying the main house and SS and RC occupying the laneway house, they are all parties to a single tenancy agreement with the landlord. They are co-tenants of the rental unit which is comprised of all structures located at the civic address listed on the tenancy agreement.

Policy Guideline 13 states:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT C

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

As such, despite the fact that GL and ST paid their share of the monthly rent, they are liable to pay the landlord for the SS and RC's portion as well, in the event SS and RC do not pay it. Accordingly, the November Notice was properly served on GL and ST, despite it being for arrears for the portion of the rent that SS and RC's usually pay.

In the December 22, 2020 decision, the presiding arbitrator awarded the landlord an order of possession for the entire rental unit (that is, all buildings located at the civic address listed on the tenancy agreement) and a monetary order for rental arrears.

This relief granted is the same relief sought by the landlord in this application. I have no authority to cancel or set aside the December 22, 2020 decision.

I find that the landlord's application is moot, as he has already obtained the orders sought. I dismiss it, without leave to reapply.

Based on the uncontroverted testimony of the landlord, I find that the tenants failed to pay \$900 of the monthly rent owed for each of August, September, and October 2020. As such, I find that the October Notice was validly issued. I find that the landlord's offer to waive entitlement to August rent was contingent upon the tenants vacating the laneway house. They did not do this and are required to have paid rent for that month.

I dismiss the tenants' application, without leave to reapply.

As the landlord already has an enforceable order of possession for the rental unit (which, again, comprises both the main house and the laneway house), I decline to make a further order of possession as per section 55(1) of the Act.

Neither side was successful in their application so I decline to order that either of side reimburse the other the filing fee.

Conclusion

I dismiss both applications without leave to reapply.

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 7, 2021

Residential Tenancy Branch