



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

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

- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The landlord was represented at the hearing by an agent, LL ("landlord"). Both tenants attended the hearing. The tenants are mother and daughter and will be referred to in this decision as mother and daughter. As all parties were present, service of documents was confirmed. The tenants acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and the landlord acknowledged service of the tenants' evidence. Neither party raised issues with timely service of documents.

Issue(s) to be Decided

Is the landlord entitled to an order for unpaid rent?

If so, are both tenants responsible for the debt?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following testimony. When he advertised the rental unit for rent, the daughter responded to the ad from her work email address on June 28, 2019. The landlord recognized the daughter's name as she is a well known, successful realtor in the city. The landlord frequently referred to the daughter as being "famous" in the real estate community, having her own team of real estate professionals working for her.

In the application, filed as evidence by the landlord, the daughter tenant provides her own name, birth date, phone number, social insurance number and employer name.

The reason for leaving her currently owned residence, according to the application, is for a home renovation. In the field of "other adults", the daughter tenant lists her mother. No other information is recorded regarding the mother in the application to rent.

The landlord testified that he performed a full background check on the applicant/daughter, and he was fully satisfied with it. The landlord did not perform a background check on the mother since the daughter's credentials were good. No social insurance number, employer information or last residence references were sought in the application to rent regarding the mother. The landlord agreed to the tenancy with the daughter, understanding her mother be a co-tenant, living in the unit with her.

When the time came to sign the tenancy agreement, only the mother showed up. The landlord testified that when the landlord asked where the daughter was, the mother responded with, *"Oh, she's probably doing a showing right now"*. The landlord testified that the mother never told him that she was to be the sole tenant and that the daughter had no intention of entering into the tenancy. Satisfied with the mother's response and having done a background check on the supposed co-tenant, the landlord and the mother signed the tenancy agreement without the daughter's signature.

A copy of the tenancy agreement was provided as evidence. Both the mother and the daughter are named on the tenancy agreement. The tenancy began on August 1, 2019 and rent was set at \$3,150.00 per month payable on the first day of the month. A security deposit of \$1,575.00 and a pet damage deposit of \$1,575.00 was collected from the tenant/mother which the landlord continues to hold.

The landlord testified that the mother didn't pay her rent for April, May, June, July and August, 2020. He acknowledges receiving \$500.00 in the months of July and August by means of the covid-19 pandemic rent relief. The landlord testified that the mother was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and she moved out on September 12, 2020. The landlord seeks unpaid rent from both tenants in the amount of \$14,750.00.

The landlord submits that both the mother and the daughter are responsible for paying the outstanding arrears in rent. The landlord submits that the daughter is a licensed real estate professional and that the tenancy application was made with the intent of finding rental accommodations for her mother all along. She misrepresented who was going to be occupying the rental unit and this misrepresentation is nothing more than fraud and deception. The landlord called it a "bait and switch".

The mother gave the following testimony. She was the only one who viewed the unit the day the tenancy agreement was signed. She came to the showing with a bank draft from her own bank account and when the landlord asked where the daughter was, she told him, "*I don't know. Probably showing a house or something*". While living in the building, the landlord would often ask her how her daughter was, and that it appears to the landlord that she is doing well.

The mother gave the following testimony. When she entered into the tenancy agreement, it was a hectic time. It's hard to find a rental unit that will allow two dogs. Her daughter and her children couldn't live with the dogs because of allergies. Finding an apartment that allowed her to keep her two dogs was a perfect solution. The mother testified that she works in the health care field, casual on-call work and hasn't had much work due to covid-19 outbreaks at group homes. She started to fall behind on rent and the international students she had living with her to assist in paying the rent stopped coming. She acknowledges that rent for April to August of 2020 was not paid but that July and August's rent was partially paid by the government subsidy. She acknowledges she would like the landlord to use her pet damage deposit and security deposit to reduce the amount of arrears owing.

The daughter gave the following testimony. She doesn't dispute that she sent in an application to rent the unit, however points out that she never signed the tenancy agreement. She stated she can appreciate the application was approved based on her application, but at no point did anyone confirm with her that she was successful in getting the rental unit. She applied for a couple of units to rent then her plans changed. It's one thing to approve an application and another thing to get a tenancy agreement with a landlord. The daughter submits that the landlord should have done due diligence in the absence of her signature in entering into the contract. The daughter states that the only reason she called into this hearing is because she was named on the landlord's Application for Dispute Resolution. She has no involvement in the dispute between her mother and the landlord.

Analysis

During the hearing, the mother acknowledged rent was not paid for the months of April through August, 2020 with the exception of the two \$500.00 payments made by the government. Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. I am satisfied the landlord is entitled to the arrears in

rent sought on his monetary order worksheet, in the amount of \$14,750.00 pursuant to sections 26 and 67 of the *Act*.

The question before me is whether the daughter is jointly and severally responsible for the unpaid rent.

Section 1 of the RTA defines tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Before the tenancy agreement was signed, the daughter filled out an application to rent the unit. It is clear to me that the daughter was applying to be a tenant. She provided all the requisite information for the landlord to perform a credential check on her before agreeing to take her in her as a tenant. While the daughter argues that she made several applications and should not be held responsible when her application is accepted, I find this argument lacks merit. On the surface of the application, it is clear to me that the daughter meant for herself to occupy the rental unit or that she made this representation. If she had a change of plans, as testified to during the hearing, she ought to have contacted the landlord who agreed to accept her as a tenant to advise him. She did not.

Her excuse that the landlord never contacted her to advise her that she was the successful candidate for the rental unit is also an unworthy one. Any sensible person would expect that her mother would have communicated that information to her at some point before attending with the landlord to sign the tenancy agreement. It stands to reason that the daughter and the mother would communicate especially when they intended to live together as the application alleges. Based on the fact before me, I find the daughter did not show good faith and display an honest intention when filling out the application.

I next turn to the mother's testimony. As she stated, it was a perfect situation to have her move to her own place with her two dogs since her daughter and her daughter's children had allergies to the dogs. I am further convinced that the daughter was

motivated to have her mother find her own accommodations. Second, both the landlord and the mother have the same recollection at the time the tenancy agreement was signed. Both recall the mother telling the landlord that the daughter was busy showing a house and that is the reason why she wasn't present to sign the tenancy agreement. Not once did the mother advise the landlord that the daughter wasn't going to be his tenant. Based on this agreed fact, I find the mother perpetuated the deception of the daughter being a tenant.

The daughter owed a contractual duty to act honestly when filling out her application to rent. (*Bhasin v. Hrynew* (2014 SCC 71)). I find she knowingly misled the landlord about who was going to occupy the rental unit and ultimately become the landlord's tenant. I find both mother and daughter had a contractual duty to advise the landlord that the daughter was not going to be the tenant at some point before the landlord agreed to enter into the tenancy agreement with what he expected was both tenants. The daughter's misrepresentation cannot excuse the daughter from accepting the responsibility of fulfilling the obligation to pay rent to the landlord as a tenant as set out in section 16 of the *Act*. Accordingly, I find that there was an expressed and implied tenancy between the daughter and the landlord, and that a tenancy agreement (as defined by section 1 of the *Act*) was in place with both the mother and the daughter.

The landlord is entitled to the arrears in rent in the amount of **\$14,750.00** against both named tenants jointly and severally, pursuant to sections 26 and 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application. The landlord continues to hold the tenant's security and pet damage deposits totaling **\$3,150.00**. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary claim.

Item	Amount
Arrears in rent	\$14,750.00
Filing fee	\$100.00
Less security and pet damage deposits	(\$3,150.00)
Total	\$11,700.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$11,700.00 against both named tenants.**

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 31, 2021

Residential Tenancy Branch