



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPR, OPC, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with applications by both the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for unpaid rent and to cancel a notice to end tenancy for cause. The landlord applied for an order of possession and a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy for unpaid rent be cancelled?
If so, should the notice to end tenancy for cause be cancelled?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agree the tenant moved into the rental unit on May 1, 2013.

The landlord provided two tenancy agreements in evidence. The first tenancy agreement is between the landlord and tenant CH; it is a one-year fixed term tenancy starting March 18, 2010. CH was obligated to pay rent of \$1,650.00 monthly in advance on the first day of the month.

The second tenancy agreement is between the landlord and two tenants, the tenant in this application and HT. The second tenancy agreement is for a one-year fixed term tenancy starting May 1, 2013. It states the tenants are obligated to pay rent of \$1,680.00 monthly in advance on the first day of the month and a security deposit of

\$840.00. The second tenancy agreement is not signed by the named tenants however; it is signed by CH with the notation “agent for above persons”.

The landlord gave evidence that CH lived in the rental unit for three years and got HT and then the tenant in this application as roommates. She states CH is friends with the other two. The landlord gave evidence that HT has moved out.

The tenant gave evidence that he thought CH was the landlord. He arranged to pay \$860.00 per month to CH for his share of the rent. His rent is paid directly by the Ministry of Social Development and Social Innovation (the “Ministry”), and he arranged for the Ministry to issue his rent cheques payable to CH. The tenant gave evidence that he did not know that CH had signed a tenancy agreement as the tenant’s agent.

The landlord gave evidence that she served the tenant with a Notice to End Tenancy for Unpaid Rent (the “Unpaid Rent Notice”) by posting it on the tenant’s door on June 23, 2014. Section 90 provides that a notice served in this manner is deemed to be received three days later. The Unpaid Rent Notice states the tenant failed to pay rent of \$860.00 that was due June 1, 2014. The landlord gave evidence that she has not received any further payments and the tenant continues to occupy the rental unit.

The tenant says he gave his June 2014 rent of \$860.00 to CH. He agrees he received the Notice posted on the door on June 23, 2014. He says he wrote to the landlord when he received the Notice. The landlord says she did not receive any letter from the tenant, only the tenant’s Application for Dispute Resolution. The landlord’s phone number is on the Notice and she says she did not receive any call from the tenant regarding the situation.

The tenant says he has July and August rent cheques payable to CH, but he was not sure who he should give them to. The tenant says CH has “disappeared”.

The tenant also applied to cancel a notice to end tenancy for cause (the “Cause Notice”). Based on my decision below, I did not ask the parties to present evidence regarding the Cause Notice.

Analysis

I find that the landlord does not have a valid tenancy agreement with the tenant in this application. The second tenancy agreement was not signed by the tenant, and the tenant disputes that CH was empowered to sign the second tenancy agreement as his agent.

I accept the tenant's evidence that he paid his share of the rent to CH for the period May 2013 through May 2014. This suggests that the tenant was a sub-tenant of CH, and that CH may have been a tenant of the landlord.

I accept the landlord's evidence that she had been receiving rent of \$1,680.00 monthly for the rental unit, prior to June 2014. I also accept the landlord's evidence that she did not receive \$860.00 of June 2014 rent and that she did not receive any rent for July or August 2014. The landlord is entitled to regain possession of the rental unit from the tenant in this application, since there is no tenancy agreement which entitles him to possession of the rental unit and he has admittedly not paid rent to anyone for July or August 2014. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I have found the landlord is entitled to an order of possession, because the tenant in this application has no legal basis for continued occupation of the rental unit. For that reason, I do not need to deal with either the Unpaid Rent Notice or the Cause Notice.

I find the landlord is not entitled to a monetary order from the tenant, since she has no tenancy agreement with the tenant.

Conclusion

The tenant's application is dismissed. I grant the landlord an order of possession. The landlord's claim for a monetary order is dismissed.

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: August 22, 2014

Residential Tenancy Branch

