



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPT, CNL

Introduction

This hearing was originally scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The respondent confirmed receipt of the tenant's application and evidence package even though they were not delivered in a manner that complies with the Act. Having heard the respondent was in receipt of the tenant's documents, I deemed the respondent sufficiently served with those documents for purposes of section 88 and 89 of the Act.

I was in receipt of two packages of late evidence/submissions from the respondent prior to the hearing. The respondent acknowledged she did not give copies of the documents to the tenant. The respondent explained that she is a very busy person and does things at the last minute. As the respondent's documentation was not served upon the other party I did not accept or consider the respondent's documentary evidence in reaching this decision.

I was also provided a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property. Neither party acknowledged sending such a 2 Month Notice to the Branch; however, after hearing from the parties it became apparent that the 2 Month Notice was likely sent in by the other owner of the property. The tenant requested at the hearing that her application be amended to deal with the 2 Month Notice. The respondent acknowledged serving the tenant with a 2 Month Notice but indicated that she was not prepared to substantiate the reason for giving on the 2 Month Notice. I agreed to amend the tenant's application and consider granting an adjournment to permit the respondent to prepare for that portion of the dispute. However, upon review of the 2 Month Notice, the written tenancy agreement, and the verbal submissions of the parties,

I set aside the 2 Month Notice as I found it to be invalid and ineffective without having to hear the reasons for its issuance. I have provided my reasons for setting aside the 2 Month Notice later in this decision.

Having confirmed that the tenant is currently in possession of the rental unit I found the tenant's request for an Order of Possession to be unnecessary. Accordingly, I have not addressed that request further in this decision.

On a procedural note, after providing the parties with my oral decision the respondent proceeded to make irrelevant comments. When the parties started to argue with each other I ended the teleconference call.

Issue(s) to be Decided

1. Should the 10 Day notice to End Tenancy be upheld or cancelled?
2. Should the 2 Month Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The tenant had been residing in the rental unit for approximately 14 years under a verbal tenancy agreement. The property is co-owned by two spouses or former spouses who are in the process of a marital separation. Both co-owners continue to reside on the same property as the rental unit. The tenant is the mother of the female co-owner.

On May 1, 2012 the tenant gave a cheque for the monthly rent of \$650.00 to the male co-owner of the property. The cheque was deposited into a bank account that bears the name of both co-owners on the bank statement.

The parties participated in a previous dispute resolution proceeding on May 8, 2012 and a decision was issued May 15, 2012 whereby a 2 Month Notice to End Tenancy for Landlord's Use of Property was cancelled. Also on May 15, 2012 the tenant and the male co-owner executed a written tenancy agreement requiring the tenant to pay rent of \$675.00 on the 1st day of every month for a fixed term of five years set to expire May 15, 2017.

On June 13, 2012 the female co-owner posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door. The Notice indicates that \$600.00 was outstanding as of May 1, 2012 after deducting an award of \$50.00 from the previous hearing. On

June 18, 2012 the tenant filed to dispute the 10 Day Notice on the basis the rent for May 2012 was paid.

On June 27, 2012 the female co-owner issued a 2 Month Notice to End Tenancy for Landlord's Use of Property to the tenant with an effective date of August 31, 2012.

Tenant's position

The tenant submits that the rent for May 2012 was paid to the male co-owner of the property and the rent cheque was deposited into a bank account that was formerly a joint account of the co-owners; however, the female co-owner voluntarily removed herself from the joint account. Since the rent was paid the 10 Day Notice should be cancelled.

The tenant submits that starting May 15, 2012 her landlord is the male co-owner pursuant to the written five year fixed term tenancy agreement and the female co-owner should not have issued a 2 Month Notice.

Respondent's position

The female co-owner/respondent was of the position that she has always been the landlord for the subject property, with the tenant paying her the rent, and the tenant should not have paid rent to the male co-owner in May 2012. The bank statement bearing both names of the co-owners is fraudulent and she had a document from the bank proving she is not a joint holder of the bank account.

The female co-owner is also of the position that written tenancy agreement is fraudulent as she and the tenant had a valid and binding verbal tenancy agreement in place that cannot be replaced by a written agreement with the male co-owner. The male co-owner should not have or did not have the right to enter into a written five year fixed term tenancy agreement with the tenant.

The respondent stated that she is experiencing financial difficulty without the financial support of the co-owner and that the co-owner has not responded to correspondence from her or her lawyer with respect to settling or dividing their property interests.

Analysis

It was undisputed that the tenant paid the monthly rent to the male co-owner of the property for the month of May 2012. The issue is raised by the female co-owner is that she is the landlord and the male co-owner was not the landlord when the rent was paid.

The Act defines a landlord to include any person who is an owner of the property who:

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Having heard both co-owners have lived on the property, along with the tenant in the rental unit located on the same property, for several years under a verbal tenancy agreement I find I cannot distinguish one co-owner as being the landlord over the other. Even though the tenant may have made previous rent cheques payable to female co-owner I am of the position that such payments, which may or may not have been deposited into a joint bank account, does not negate or take away from the other co-owner's standing as a landlord. Therefore, I find that in paying the male co-owner the rent for May 2012 the rent was paid to a landlord of the property.

Further, to make a finding the tenant did not pay rent to a landlord of the property for the month of May would be an absurd result in my view. To nullify the 10 Day Notice, the tenant would have had to come forward to the female co-owner with a second rent payment for the month of May 2012 and try to get a refund from the male co-owner. I find the underlying dispute revolves around which co-owner is entitled to receive the rent monies from the tenant. Accordingly, the co-owners are left to resolve their dispute as to distribution of the funds received from the tenant for the month of May 2012.

Having found rent was paid for May 2012 I cancel the 10 Day Notice issued June 13, 2012 and the tenancy continues.

With respect to the 2 Month Notice, a landlord cannot end a tenancy for landlord's use of property while a fixed term tenancy is in effect. I am satisfied that the written tenancy agreement entered into on May 15, 2012 was executed by the tenant and an owner of the property and that a fixed term tenancy is in effect until May 15, 2017. I find there is no basis to conclude the written tenancy agreement signed by the co-owner and the tenant is invalid under the Act or the authority afforded me under the Act. Therefore, I have cancelled the 2 Month Notice since a fixed term tenancy is in effect without finding it necessary to hear the reason(s) for the issuance of the 2 Month Notice.

It is clear to me that the co-owners are in a dispute over management and/or ownership rights of the property, among other issues, which need to be resolved in the appropriate forum. As the female co-owner was informed during the hearing, it is inappropriate to continue to use the Act and the Residential Tenancy Branch as a means to resolve a marital and/or family dispute by repeatedly issuing Notices to End Tenancy.

I make no award for recovery of the filing fee as no such request was made by the tenant.

Conclusion

The 10 Day Notice to End Tenancy has been cancelled and a finding has been made that May's rent was paid. The 2 Month Notice has been cancelled and I decline to find the written tenancy agreement entered into May 15, 2012 invalid or otherwise unenforceable.

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: July 26, 2012.

Residential Tenancy Branch