



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, CNR, OLC, FF

Introduction

On February 27, 2016, the Applicants submitted an Application for Dispute Resolution requesting the following:

- for more time to make an application to dispute a notice to end tenancy.
- to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property.
- for the Landlord to comply with the Act, Regulation, or tenancy agreement.
- to recover the filing fee for the Application.

On March 7, 2017, the Applicants amended their Application to include:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2017.

On March 14, 2017, the Applicants amended their Application to include:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 10, 2017.

On March 24, 2017, the Applicants amended their Application to include:

- A monetary claim in the amount of \$25,000.00.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Applicant W.S. testified that his Application to request more time to make application to dispute a notice to end tenancy issued by the Landlord was in response to two letters that another occupant of the rental unit gave to him. The Applicant confirmed that he did not receive a proper notice to end tenancy for Landlord use of property. As such I dismiss the Applicant's request for more time to dispute a notice to end tenancy for Landlord use of property.

The owner of the property testified that he does not have a tenancy agreement with the Applicants, but he issued the a 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on the advice of the Residential Tenancy Branch, in case the arbitrator makes a finding that there is a tenancy between the parties.

The owner testified that he issued the following Notices:

- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2017
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 10, 2017

The owner testified that he issued the second 10 Day Notice because the first 10 Day Notice was issued on the same date that rent was due.

I find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2017, was issued prematurely and is set aside.

The Applicants amendment to the Application to include a monetary claim of \$25,000.00 was filed five days prior to the hearing and is considered to be late under the Residential Tenancy Branch rules of procedure. The owner has not had an opportunity to consider or respond to the Applicants' monetary claim. The Applicants monetary claim will not be considered in this hearing.

The hearing proceeded on the Application requesting the Landlord comply with the Act, Regulations or tenancy agreement, and the amendment to the Application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 10, 2017.

Issues to be Decided

- Is the Applicant a Tenant of the owner of the property and does the Act apply?
- Should the 10 Day Notice be set aside?
- Is the owner entitled to an order of possession?
- Is the Applicant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant W.S. testified that his tenancy began on March 1, 2016, as a month to month tenancy. He testified that his mother and he shared the rental house with another occupant M.S. He testified that other than sharing the kitchen, the parties stayed in separate rooms and areas of the house.

The Applicant testified that the tenancy agreement he reached with M.S. requires the Tenants to pay M.S. \$1,000.00 on or before the first day of each month. He testified that he did not pay a security deposit. He testified that he paid his rent directly to M.S. but he made his rent cheques payable to the owner. He testified that he is aware that the M.S. pays rent to the owner each month and that M.S. pays a portion of the rent. He testified that he had no contact with the owner of the property when the tenancy agreement was reached. He testified that there is not a written tenancy agreement.

The Applicants submitted that they believe their tenancy agreement is with the owner of the rental property. They submitted that M.S. was acting as the agent for the owner and since they have paid their rent in full for March 2017, they have the right to possess the rental unit. They submitted that they expect that the owner will need to rent out rooms in the house to make up the shortfall in the rent.

M.S. testified that he allowed the Applicants to move into the house and share it as roommates. He testified that the Applicants were roommates of his, and not Tenants of the owner. He testified that the parties shared the kitchen and laundry.

M.S. testified that he entered into a tenancy agreement with the owner of the property in June 2015, and that he paid \$900.00 per month for the first 9 months. Beginning April 1, 2016, he was required to pay the owner \$1,500.00 per month. He testified that the Landlord permitted him to have roommates, but the Landlord did not enter into tenancy agreements with his roommates.

M.S. testified that he gave written notice to the owner that he was ending his tenancy effective February 28, 2017. He testified that he moved out on February 28, 2017, but returned to the rental unit a couple days into March to retrieve some belongings.

M.S. testified that he notified the roommates that he ended the tenancy, and that they will need to move out. He testified that he sent two letters to the Applicants dated January 23, 2017, and February 14, 2017.

The Applicants provided a copy of the letters.

The letter dated January 23, 2017, is addressed to the Applicants, and states that M.S. has given notice to the Landlord that he is ending his tenancy, and informs the Applicants that their tenancy ends on the same date. The Letter states that if they wish to contact the owner to make other arrangements to call the owner.

The hydro for the rental unit was in the name of M.S. and he cancelled his service when he moved out.

The owner testified that he rented the house to M.S. who is an employee of his and he gave M.S. permission to have roommates. He testified that M.S. did not directly mention that the Applicants were moving in, and that he only became aware in May that they had moved in.

The owner testified that he did not have an oral or a written tenancy agreement with the Applicants. He testified that he never collected rent payments from the Applicants. He submitted that M. S. was responsible to pay him the rent and M.S. deposited the rent money directly into the owners account each month.

The owner testified that he was willing to enter into a tenancy agreement with the Tenants if they would agree to pay the same monthly rent he was getting from M.S.

Analysis

Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet provides the following guidance with respect to such situations and reads as follows:

“Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.”

Based on the testimony of the parties and the evidence before me, I make the following findings:

I find that there is insufficient evidence from the Applicants to establish that there was a tenancy agreement created between the Applicants and the owner of the property. There was no verbal or written tenancy agreement between the Applicants and the owner of the rental unit. There is insufficient evidence from the Applicants to establish that M.S. was acting as agent for the owner.

The tenancy agreement for the rental property ended when M.S. moved out of the rental unit.

In consideration of the above, I find the Applicants were occupants/roommates and as such the *Residential Tenancy Act* does not apply to this dispute. Accordingly, I decline jurisdiction.

Since the Applicants were not successful with their application, the request to recover the cost of the filing fee against the Respondent is denied.

Conclusion

I decline jurisdiction to hear the dispute between the parties on the basis that there is insufficient evidence from the Applicants to establish that there was a tenancy agreement created between them and the owner of the property.

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: March 30, 2017

Residential Tenancy Branch