



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Melcor Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

On April 12, 2017 the Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for Landlord stated that on April 12, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 8 pages of evidence the Landlord submitted with the Application for Dispute Resolution were sent to each respondent named on the Landlord's Application for Dispute Resolution. The Landlord submitted Canada Post documentation that corroborates this testimony.

The Occupant acknowledged receipt of the aforementioned documents and I therefore find that these documents have been served to her in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Occupant stated that neither of the other two respondents named in the Landlord's Application for Dispute Resolution were living in the rental unit in April of 2017. The Agent for the Landlord agreed that neither respondent was living in the rental unit in April of 2017. As neither of the other two respondents named in the Landlord's Application for Dispute Resolution were living in the rental unit in April of 2017, I find that neither one of them was served with the Landlord's Application for Dispute Resolution in accordance with section 89 of the *Act*.

As neither of the other two respondents named in the Landlord's Application for Dispute Resolution were served with the Landlord's Application for Dispute Resolution in accordance with section 89 of the *Act*, I dismiss the Landlord's application for a monetary Order or an Order of Possession naming these respondents, with leave to reapply.

On March 29, 2017 the Occupant filed an Application for Dispute Resolution in which the Occupant applied to cancel a Notice to End Tenancy for Cause. The Occupant stated that on April 05, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 12 pages of evidence she submitted with the Application for Dispute Resolution were personally delivered to the Landlord's business address. The Agent for the Landlord acknowledged receipt of the aforementioned documents. I therefore find that these documents have been served to the Landlord in accordance with section 89 of the *Act* and the evidence was accepted as evidence for these proceedings.

On April 03, 2017 the Occupant filed an Application for Dispute Resolution in which the Occupant applied to cancel a Notice to End Tenancy for Unpaid Rent. The Occupant stated that on April 03, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 4 pages of evidence she submitted with the Application for Dispute Resolution were personally delivered to the Landlord's business address. The Agent for the Landlord stated that these documents were not received by the Landlord.

I find that there is insufficient evidence to establish that the Application for Dispute Resolution filed by the Occupant on April 03, 2017 was delivered to the Landlord's business office. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's testimony that it was personally delivered or to refute the Agent for the Landlord's testimony it was not received.

As there is insufficient evidence to establish that the Landlord received the Application for Dispute Resolution that was filed by the Occupant on April 03, 2017, that Application is dismissed with leave to reapply. That Application is dismissed with leave to reapply, rather than being adjourned, as I find it highly likely the issues in dispute in that Application will be adequately addressed at these proceedings on the basis of the Landlord's Application for Dispute Resolution, and I find it would be unfair to the Landlord to delay these proceedings unnecessarily. In the unlikely event the Tenant does not believe that the issues in dispute in that Application for Dispute Resolution have been adequately addressed, she retains the right to file another Application for Dispute Resolution.

I find that 3 of the 4 pages of evidence submitted with the Application for Dispute Resolution that was filed by the Occupant on April 03, 2017 were submitted in evidence with the previously mentioned Applications for Dispute Resolution. I therefore find that they will be considered in evidence and I do not need to determine whether they were also served to the Landlord on April 03, 2017.

I find that 1 of the 4 pages of evidence submitted with the Application for Dispute Resolution that was filed by the Occupant on April 03, 2017 is simply a written submission made by the Occupant. As the Occupant is able to make this written submission at the hearing, I find it is not necessary for me to consider this physical document as evidence and I do not need to adjourn this hearing to provide the Occupant with the opportunity to re-serve this document to the Landlord.

On April 12, 2017 the Landlord submitted 8 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Occupant, via registered mail, on April 03, 2017. The Occupant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 21, 2017 the Occupant submitted 21 pages of evidence and a DVD to the Residential Tenancy Branch. The Occupant stated that this evidence was personally delivered to the Landlord's business office on, or about, April 10, 2017. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be set aside?

Is the Landlord entitled to an Order of Possession for Unpaid Rent or a monetary Order that names the Occupant?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The Landlord and the Occupant agree that the two respondents named in the Landlord's Application for Dispute Resolution who did not appear at these proceedings entered into a written tenancy agreement with the Landlord, a copy of which was submitted in evidence. This tenancy agreement indicates the tenancy began on July 01, 2016 and that rent of \$850.00 was due by the first day of each month.

The Occupant and the Landlord agree that the other female respondent named in the Landlord's Application for Dispute Resolution had vacated the rental unit by the time she moved into the rental unit.

The Occupant stated that male respondent named in the Landlord's Application for Dispute Resolution (hereinafter referred to as the male Respondent) allowed her to move into the rental unit on November 01, 2016 on the basis of a verbal tenancy agreement. She stated that she agreed to pay the male Respondent \$425.00 in rent and that she paid that rent to him in November and December of 2016 and in January of 2017.

The Occupant stated that the male Respondent moved out of the rental unit on February 01, 2017. She stated that she paid \$850.00 in rent to the Building Manager for February and March of 2017 and that he told her he was only accepting the rent on the understanding it was being paid on behalf of the male Respondent and that rent receipts were issued in the name of the male Respondent.

The Agent for the Landlord stated that the Landlord first became aware that the Tenant had moved into the rental unit when she paid the rent on behalf of the male Respondent on February 01, 2017.

The Occupant stated that she submitted an application to rent sometime near the beginning of January of 2017.

The Agent for the Landlord stated that the Occupant submitted an application to rent on February 08, 2017. The Agent for the Landlord stated that the only information on the application to rent was the Occupant's name. The Occupant stated that she provided additional details of the application to rent, including such things as her former address.

The Occupant stated that she was never informed that the Landlord had accepted her application to rent and that the Building Manager told her that the company would decide if her application was being accepted.

The Building Manager stated that he told the Occupant that the Landlord was considering her application to rent and that he subsequently told her that the application was not accepted because it was incomplete.

The Landlord and the Occupant agreed that the Landlord refused to accept rent from the Occupant for April of 2017. The Agent for the Landlord stated that the rent was refused because the Landlord understood that the other female respondent and the male Respondent had vacated the rental unit; the male Respondent did not have written authority to sublet the unit to the Occupant, and the Landlord did not wish to enter into a tenancy agreement with the Occupant.

The Occupant stated that she was told the rent cheque for April was not being accepted because the rent payment was being made in her name and she was not a tenant of the rental unit.

The Occupant submitted a DVD with digital recordings that I could not hear on my computer. The Occupant submitted a transcript of those recordings. The following excerpts from the transcript of a conversation with the Building Manager from February 24, 2017 are relevant:

- Building Manager: "If you give pay the rent I would have to call the office and find out where to go from there" (sic);
- Building Manager: "But, I'm assuming what I know about moving in which is the residential tenancy act. I can't guarantee anything. But, if you paid your rent you'd probably be good for thirty days." (sic);
- Occupant: "The thirty days does help. Because I have already been looking at some places"
- Building Manager: "You know all of my business goes through head office. They make the final decision. But, from my own personal experience from the residential tenancy act. That's the way I perceive it. But, I know don't count on

it, But, it's a possibility. But, uh things get ripped off a little. If you could pay the rent then that would be great”;

- Building Manager: “All I can say is good luck in your search...”
- Occupant: “Well, I am sure I'll find something...”
- In relation to the rent receipt, Building Manager: “I'll put Darren's name”;
- Advocate: “You should put it in hers”; and
- Building Manager: “He's on the lease she's not”.

The Agent for the Landlord stated that a security deposit of \$450.00 was paid for this tenancy. The Occupant stated that the male Respondent told the Building Manager that he wanted his security deposit transferred to the Occupant. The Building Manager denies this submission.

The Landlord and the Occupant agree that on March 20, 2017 a One Month Notice to End Tenancy for Cause was posted on the door on the rental unit. This Notice to End Tenancy declared that the male Respondent and the female Respondent who did not attend this hearing must vacate the rental unit by April 30, 2017. The Occupant is not named on this Notice to End Tenancy. The Occupant stated that she located this Notice on the door of the rental unit on March 20, 2017.

The Landlord and the Occupant agree that on April 02, 2017 a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door on the rental unit. This Notice to End Tenancy declared that the male Respondent and the female Respondent who did not attend this hearing must vacate the rental unit by April 12, 2017. The Occupant is not named on this Notice to End Tenancy. The Occupant stated that she located this Notice on the door of the rental unit on April 02, 2017.

Analysis

On the basis of the tenancy agreement and the undisputed testimony, I find that the Landlord, the male Respondent, and the female respondent who did not appear at these proceedings entered into a written tenancy agreement on July 01, 2015, for which the tenants agreed to pay rent of \$850.00 by the first day of each month.

Section 1 of the *Act* defines a tenancy agreement as 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.

On the basis of the undisputed evidence I find that the Occupant moved into this rental unit with the knowledge and consent of the male Respondent, who moved out of the rental unit on February 01, 2017.

I find that there is no evidence the Landlord and the Occupant entered into a written tenancy agreement.

I find that there is insufficient evidence to establish that the Landlord entered into an oral tenancy agreement with the Occupant. In reaching this conclusion I was influenced by the undisputed evidence that the Tenant submitted an application to rent; that she was merely informed that the application was being considered; that she was never informed that her application for tenancy had been accepted; and that she was subsequently informed that her application for tenancy was not accepted.

In circumstances accepting a rent payment can sometimes help establish that a tenancy has been "implied". I do not find that to be true in these circumstances, as the Landlord made it clear that rent was not being accepted on behalf of the Occupant. I find that the Landlord made it clear that rent was not being accepted on behalf of the Occupant when the Building Manager issued rent receipts in the name of the male Respondent, rather than in the name of the Occupant who paid the rent.

I find that the Landlord made it clear that rent was not being accepted on behalf of the Occupant when the Building Manager explained to the Advocate for the Occupant that the rent receipt was being put in the male Respondent's name because the Occupant was not "on the lease".

On the basis of the transcript of the conversation between the Building Manager and the Occupant, dated February 24, 2017, I find that the Occupant was fully aware at that point that the parties had not entered into a tenancy agreement. It is very clear from that transcript that the Occupant understood that her tenancy application had not been accepted and, as a result, was still looking for alternate accommodations.

On the basis of the transcript of the conversation between the Building Manager and the Occupant, dated February 24, 2017, I accept that the Building Manager told the Occupant that if she paid the rent for March he would have to call the office and "find out where to go from there". I find that on the basis of the information the Occupant understood, or should have understood, that this rent payment did not establish a tenancy had been created.

On the basis of the transcript of the conversation between the Building Manager and the Occupant, dated February 24, 2017, I accept that the Building Manager told the Occupant that if she paid the rent for March she would "probably be good for thirty days." I find that on the basis of the information the Occupant understood, or should have understood, that this rent payment did not establish a tenancy had been created and that the payment was being accepted for "use and occupancy" for the month of March.

I find that there is insufficient evidence to establish that the male Respondent told the Building Manager that he wanted his security deposit transferred to the Occupant. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Occupant's testimony that the male Respondent made this request or

that refutes the Building Manager's testimony that the male Respondent did not make this request.

As there is insufficient evidence to establish that the Landlord and the Occupant have entered into a tenancy agreement, I find that the Occupant is not a tenant of this rental unit and she does not, therefore, have any rights or obligations in regards to this rental unit.

As the Occupant does not have any rights or obligations in regards to this rental unit, I find that she was not obligated to pay any rent to the Landlord and I therefore dismiss their claim for a monetary Order for unpaid rent that names the Occupant.

Section 47 of the *Act* permits a landlord to end a tenancy for a variety of reasons. On the basis of the undisputed evidence I find that a One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, was posted on the door of the rental unit on March 20, 2017. I note that this Notice names the male Respondent and the female Respondent who did not attend this hearing, and that it does not name the Occupant.

Section 47(5) stipulates that a "tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice". As I have concluded that the Occupant is not a tenant in this rental unit I find that she does not have the right to dispute the One Month Notice to End Tenancy for Cause that was post on the door of the rental unit on March 20, 2017. I therefore dismiss the Application for Dispute Resolution filed by the Occupant on March 29, 2017, in which she applied to cancel this Notice to End Tenancy for Cause.

Section 46 of the *Act* permits a landlord to end a tenancy if rent is not paid when it is due. On the basis of the undisputed evidence I find that a Ten Day Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, was posted on the door of the rental unit on April 02, 2017. I note that this Notice names the male Respondent and the female Respondent who did not attend this hearing, and that it does not name the Occupant.

As the Landlord does not have a tenancy agreement with the Occupant and the Occupant is merely occupying the rental unit at the invitation of the male Respondent, I find that the Landlord is not required to end a tenancy with the Occupant. As the Landlord is not required to end a tenancy with the Occupant, I find that the Landlord is not entitled to an Order of Possession that names the Occupant. I therefore dismiss the Landlord's application for an Order of Possession naming the Occupant.

On the basis of the undisputed evidence I find that the male Respondent has vacated the rental unit. As the male Respondent is no longer occupying the rental unit, I find that the male Respondent no longer has the right to allow the Occupant to live in the rent and that the Occupant no longer has the right to live in the rental unit. I find that the

Occupant no longer has a legal right to occupy the rental unit and that she must vacate the unit at the direction of the Landlord.

I find that the Occupant has submitted insufficient evidence to show that the male Respondent told the Landlord that he wanted his \$450.00 security deposit transferred to the Occupant. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Occupant's testimony that the male Respondent gave this direction to the Building Manager or that refutes the Building Manager's testimony that this direction was not provided to the Landlord. As the Occupant has not established a right to the security deposit, I am unable to issue an Order requiring the Landlord to return it to the Occupant.

As there is insufficient evidence to show that the male Respondent and the female respondent who did not attend the hearing were properly served with notice of these proceedings, I am unable to consider the Landlord's application to retain their \$450.00 security deposit and it is dismissed, with leave to reapply. The Landlord remains obligated to deal with the security deposit in accordance with sections 38 and 39 of the *Act*.

I find that the Landlord has failed to establish the merit of the Landlord's Application for Dispute Resolution and I therefore dismiss the Landlord's application to recover the cost of filing their Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution that was filed by the Occupant on March 20, 2017, is dismissed without leave to reapply, because the Occupant does not have the right to dispute the Notice to End Tenancy that was posted on the door of the rental unit on March 20, 2017.

The Application for Dispute Resolution that was filed by the Occupant on April 03, 2017, is dismissed with leave to reapply, because the Occupant has provided insufficient evidence to establish that it was properly served to the Landlord. I note that if the Occupant should chose to reapply, however, it is highly likely her Application will be dismissed if an Arbitrator concludes that she does not have the right to dispute the Notice to End Tenancy that was posted on the door of the rental unit on April 02, 2107.

The Landlord's application for a monetary Order naming the male Respondent and the female respondent who did not attend the hearing is dismissed, with leave to reapply, because there is insufficient evidence to establish that they were properly served with notice of these proceedings.

The Landlord's application for a monetary Order naming the Occupant is dismissed, without leave to reapply, because there is insufficient evidence to establish that she had an obligation to pay rent to the Landlord.

The Landlord's application for an Order of Possession naming the male Respondent and the female respondent who did not attend the hearing is dismissed, with leave to reapply, because there is insufficient evidence to establish that they were properly served with notice of these proceedings.

The Landlord's application for an Order of Possession naming the Occupant is dismissed, without leave to reapply, as the Occupant is merely occupying the rental unit at the invitation of the male Respondent and the Landlord is not required to end a tenancy with the Occupant.

For the benefit of both parties and the benefit of any third party who may be asked to intervene in this matter, I find that the Occupant no longer has a legal right to occupy the rental unit and that she must vacate the unit at the direction of the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 09, 2017

Residential Tenancy Branch