



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, LRE, LAT, OLC, CNC, OPC

Introduction

In the first application the tenants seek to cancel a one month Notice to End Tenancy for cause dated and received August 28, 2020. They also seek a repair order, an order restricting the landlord's right of entry, a compliance order and permission to change the locks to the rental unit.

In the second application the landlord seeks an order of possession pursuant to the Notice.

The listed parties attended the hearing, the landlord by his purported representative, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The tenants' advocate Mr. BH made a preliminary objection that Ms. DB, the purported representative of the landlord and the person who signed the Notice is question, is not authorized to represent him. Additionally he appeared to argue that Mr. WB was not the landlord of this property.

Ms. DB made an initial objection to the tenants' application arguing that they had failed to apply to cancel the Notice within the ten day period set by s. 47(4) of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Is Mr. WB the tenants' landlord? Is Ms. DB the landlord's authorized representative? Have the tenants made application to cancel the Notice within the permitted time period? If so, does the evidence prove on a balance of probabilities that any of the grounds for ending the tenancy, as listed and particularize in the Notice, have been established?

Background and Evidence

The rental unit is a three bedroom house located on a five-acre rural property. There is no written tenancy agreement. The tenants say the tenancy started in the summer of 2017. Ms. DB says it started in the summer of 2016.

The registered owner of the property was, apparently, Ms. CB, the late sister of Ms. DB and the wife of Mr. WB. It is agreed that Mr. WB is the executor named in the will of the late Ms. CB. Ms. DB has filed documentation signed by Mr. WB to indicate she has a caretaker or manager role over the property.

It would appear that Mr. WB moved out of the property after the passing of his wife. It is agreed that Mr. WB rented the house to these tenants on the basis that they would pay no rent but would maintain the five acres and the house.

The question of why the tenants would be seeking a repair order when it is they who are required to maintain the property was not asked or otherwise addressed at this hearing.

Mr. B.H. argues that in the past it was he who acted on behalf of Mr. WB and that in that role he has evicted many people from the property. He states that the estate is wrapped up in three Supreme Court actions dealing with its management. He indicated that the issues here are "*res judicata*" this forum. He did not file or cite any particular Supreme Court action nor refer to any particular decision, either of the Court or the Residential Tenancy Branch.

Ms. DB refers to the materials she has filed and provided to the tenants. In that material she makes the argument that the tenants are too late to apply to cancel the Notice.

The tenants' application was made on September 10, 2020, the date the Residential Tenancy Branch indicates as the date of "intake payment."

Analysis

This matter was determined on the basis of the landlord's preliminary objection that the tenants' application to cancel the Notice was too late. The grounds for the Notice were not addressed.

Ms. DB's Authority

I find that Mr. WB is the landlord and that Ms. DB is his proper representative.

Mr. BH's contentions show that in the recent past he represented Mr. WB as landlord and that the tenants took possession under an arrangement with Mr. WB, so obviously Mr. WB is their landlord.

Mr. BH says that he spoke to Mr. WB about this matter last Friday. If that is true and if Mr. WB did not agree that Ms. DB should be representing him, then, in my view, it was incumbent on Mr. WB to say so at this proceeding, either by submitting a statement or calling in by phone. His absence today indicates to me that Ms. DB is his lawful representative.

Further, these parties were just at a hearing in October as the result of the tenants' application for emergency repairs (file number shown on cover page of this decision). They listed both Mr. WB and Ms. DB as landlords in their application. Neither tenant attended that hearing and their application was dismissed without leave to re-apply.

The Tenants' Late Application

The tenants' application has been made outside of the ten day period prescribed by s. 47(4) of the *Act*. Though the landlord's material warned the tenants of this failure, they have not amended their claim to request and extension of time under s. 66 of the *Act*, nor requested an extension of time at this hearing nor alleged exceptional circumstances causing the delay, though Mr. BH, their representative asserted an expertise in residential tenancy matters, having been involved, he said, in "innumerable" dispute proceedings.

In all the circumstances I find that the tenants' application was made outside the ten day period prescribed by s. 47(4) of the *Act*.

As a result, by operation of s. 47(5) of the *Act*, the tenants are conclusively deemed to have accepted the September 30, 2020 effective date in the Notice.

Conclusion

This tenancy ended on September 30, 2020 and the landlord is entitled to an order of possession.

As this tenancy has ended the tenants' requests for repairs, a compliance order, a lock change or a limitation on the landlord's right of entry are dismissed.

At hearing the tenants were apprised of their right to apply for review of this decision.

The landlord does not claim recovery of a filing fee.

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: November 02, 2020

Residential Tenancy Branch