



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPT & OLC

Introduction:

This hearing dealt with a tenant's application seeking an Order of Possession to the rental unit and an Order requesting that the landlord comply with the tenancy agreement and *Act*. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Is there a binding tenancy agreement between the tenant and the landlord? Is the landlord failing to comply with the tenancy agreement and the *Act*?

Background and Evidence:

The tenant states that he entered into a tenancy agreement with an agent of the landlord effective September 1, 2008. According to the tenant the landlord's agent paid the rent for September and October 2008 and thereafter the landlord was to receive the rent directly from his disability payments. The tenant paid the landlord's agent half the month's rent for September 2008. The tenant submits that the landlord has subsequently told the disability provider that he is not a tenant and has taken a course of action to remove him from the rental unit. The tenant states that the landlord has been turning off the power to the rental unit.

The landlord's agent is in fact was the tenant of the above noted rental unit. He provided the landlord with verbal notice to end the tenancy effective the end of August 2008 and made arrangements for this tenant to move into the rental unit. This individual, identified as RL, acted in the capacity of a landlord and filled out the tenant's shelter information form on behalf of the landlord. The landlord stated that he would have only agreed to a tenant who qualifies for the rental unit and has taken the position that the tenant is not eligible to be a tenant. The landlord is claiming that the tenant is not an authorized tenant and that there has been no rent paid since October 2008.

Analysis:

There were several documents submitted respecting this dispute. One was a hand written note from RL to the tenant. In this undated note RL indicates that he stopped by to pick up the mail and that he has paid the rent for October 2008. This note appears to be stating that the tenant cannot remain at the rental unit but gives no dates at which time the tenant is to vacate. Another hand written note, dated August 29, 2008, addressed to the landlord states that he is giving his suite to the tenant. He writes in this note that he has accepted rent money in September 2008 and thereafter the tenant will pay the rent directly to the landlord. Finally there is a copy of the shelter information form which RL filled out on behalf of the landlord identifying the tenant will be renting the above noted rental unit for the monthly rent of \$589.00 including hydro.

It is clear that the individual RL failed to act in a responsible manner in setting up this tenancy. However, I am satisfied based on the evidence before me that RL ended his tenancy with the landlord and was given the authority to find a new tenant. While it does appear that the landlord wished to have a final say on whether the new tenant was acceptable, RL went ahead in his capacity as an agent of the landlord and filled out the tenant's shelter information for his disability payments. I accept that the landlord granted RL the right to act as an agent of the landlord and in that capacity RL entered into a tenancy agreement with the tenant.

I find that the landlord has entered into a binding tenancy agreement with the above named tenant effective September 1, 2008 for the monthly rent of \$589.00 including hydro. The landlord has then attempted to end this tenancy, outside of the parameters of the *Act* by declining the tenant's rent through his disability and by breaching the *Act* in withdrawing essential services by turning off the power to the rental unit.

I Order that the landlord immediately grant this tenant exclusive possession and occupation of the rental unit and comply with all the obligations required under the tenancy agreement and the *Act*. I also find that the landlord must immediately complete a new shelter information form for the tenant's disability funds to allow the payment of rent. I find that the landlord is unable to end this tenancy due to non-payment of rent until the landlord complies. The current non-payment of rent is directly due to the landlord's actions by declining the shelter information previously provided.

Conclusion:

I accept the tenant's application and grant the tenant an Order of Possession to the above noted rental unit effective **immediately**. The landlord is Ordered to comply with the tenancy agreement and *Act* respecting this tenancy and must provide all essential services and must make immediate arrangements to allow the tenant to have the rent paid by completing a new shelter information form for the tenant's disability benefits.

Dated December 10, 2008.

Dispute Resolution Officer