



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

ET

Introduction

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant. Both parties appeared and each gave testimony in turn. A witness also appeared.

Issue(s) to be Decided

The landlord is seeking an Order of Possession based on section 56(1) of the *Residential Tenancy Act*, (the *Act*), which permits the landlord to end a tenancy without notice to a tenant in certain restricted and compelling circumstances. In making a determination on this matter, the following issue must be to be decided based on the testimony and the evidence presented during the proceedings:

- Has the landlord established sufficient proof that the criteria contained in section 56(2) of the Act has been met to justify ending the tenancy and entitle the Landlord to be granted an Order of Possession under the *Residential Tenancy Act*, (the *Act*). This requires a determination of whether both of the following has occurred:
 - a) the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed , seriously jeopardized the health or safety or a lawful right or interest of the landlord or other occupants, or has put the landlord's property at

significant risk or engaged in illegal activity that has resulted in causing damage, and affecting the quiet enjoyment, security, safety, physical well-being, lawful right or interest of another occupant of the residential property,

and

- b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

Preliminary Issue

The respondent challenged the applicant's authority to make an application to terminate the tenancy on the basis that the applicant was not delegated the authority to represent the landlord or to act as the respondent's landlord. Before proceeding with the matter under dispute, it must be established whether this application has been submitted by a person who is an agent of the landlord in an action against a person who is a tenant under the authority of the applicant.

The respondent testified that she and the applicant are not in a landlord/tenant relationship and are actually co-tenants. The tenant pointed out that the rental unit is shared by four residents, each of whom occupies a room and has access to common areas. The tenant claimed that the applicant and the respondent both function equally in the role of manager, collecting rent from the other two occupants and forwarding the rent to the owner/landlord. The applicant stated that she is not required to pay her rent to, nor to bring her own tenant issued to, the respondent.

The applicant testified that he and the respondent had previously been jointly responsible for managing the building and collecting the rents in the past. However, the respondent had moved out relinquishing her manager role and then subsequently returned. The applicant stated that the management duties had recently been assigned solely to him by the owner/landlord and that he functioned as landlord to the other three occupants including the respondent. The applicant stated that in his role as landlord, he did have the authority to issue

Notices terminating the tenancy of the respondent and did have the authority to represent the landlord as agent in seeking an early end to this tenancy .

The witness for the applicant supported the applicant's testimony and stated that she was aware that the applicant and respondent were in a relationship in the past and had co-managed the rentals together. However, according to the witness, the applicant was now assigned all of the landlord duties collecting rent and functioning as landlord to the other residents. The witness stated that despite the new development, the respondent has refused to accept that the applicant had been delegated this authority and continued to interfere by collecting rents and falsely representing herself as an agent of the landlord. The witness testified that, moreover, the respondent has been interfering with the quiet enjoyment of the applicant, visitors and other occupants.

The applicant and respondent both stated that the landlord/owner could give testimony in order to establish which one of the parties has been assigned to be manager, or whether both of the parties represented the landlord. The owner was contacted and in his testimony, stated that as far as he was aware, both the applicant and the respondent shared responsibility for collecting and submitting rent from the other renters. When specifically asked if the applicant had been given the exclusive duty of functioning as representative of the landlord the owner stated that he could not confirm that this was the case. It was also evident that the landlord was not aware that the applicant had made an application to terminate the tenancy or the respondent.

Analysis

Under the Act, the definition of "landlord", in relation to a rental unit, includes any of the following: The owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (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.

I find that the applicant has not sufficiently met the burden of proof to establish that he was acting as an agent to the landlord, nor that he had rented the entire premises and authorized as landlord to sub-rent the rooms on his own behalf.

According to the Residential Tenancy Guidelines, a tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement and are jointly and severally liable for any debts or damages relating to the tenancy. This means that if one co-tenant defaults, the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants and the responsibility falls to the tenants to apportion among themselves the amounts owed.

In this instance, I find the applicant and respondent not to be in a landlord-tenant relationship with each other. I find that these two individuals are, at present, co-tenants. I make no findings in regards to which tenant is or may be, responsible for rent collection or any other management duties on behalf of the landlord.

Conclusion

Accordingly, on the basis that the applicant has not successfully established that he is the landlord, nor that he is acting on behalf of the landlord, in regards to ending this tenancy, I hereby dismiss the application before me without leave.

May 2009

Date of Decision

Dispute Resolution Officer