Dispute Resolution Services

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

DECISION

Dispute Codes:

OPR, MNR, CNR

Introduction

This hearing was convened as a rehearing of the landlord's application requesting an Order of Possession against the two individuals named as tenant, TS and WD. The landlord was also seeking a monetary order for unpaid rent owed for February and for March 2010. This was also a hearing to deal with the tenant's application submitted on January 10, 2010 under file 741975 to cancel the Ten-Day Notice for Unpaid Rent dated February 2, 2010.

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession?
- Has the Landlord established monetary entitlement to compensation for rent still outstanding?

Issues to be decided: Tenant's Application

- Was there a tenancy?
- Is the tenant entitled to possession of the unit?

- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

Background and Evidence:Notice to End Tenancy

Based on the testimony of both parties, the background is as follows. A tenancy agreement was signed on December 7, 2009 between the landlord and WD for a month-to-month tenancy. A copy of the tenancy agreement was submitted into evidence. On January 6, 2010, WD advised the landlord that he was terminating the tenancy and the landlord later received written confirmation that WD was ending the relationship and vacating the unit. However, WD had paid the rent in full for January 2010 and when he vacated left some occupants, who were living with him and were not tenants, in the unit. One of these occupants was TS.

According to the landlord, as of February 1, 2010, the tenancy with WD was at an end and several days prior to that date, the landlord went to the unit and found that three occupants were still living there. The landlord stated that one of the occupants, TS, wanted to begin a tenancy with the landlord. The landlord stated that it did not agree to enter into a tenancy relationship with TS and did not accept any rent nor deposit from the individual. The landlord testified that a rent cheque was received directly from the Ministry on behalf of a person, CF, who had apparently made representations to the Ministry on January 14, 2010, that he was a tenant of the landlord renting the dispute address and had also submitted a fraudulently signed acknowledgement purportedly from the landlord. The landlord testified that at no time did the landlord ever sign a Ministry form attesting that this individual, CF, had a tenancy agreement with the landlord. The landlord returned the cheque to the Ministry.

The landlord testified that a written notification was issued to the occupants on January 28, 2010 and a second one on January 29, 2010, advising all inhabitants that the legal tenant, WD, had ended the tenancy as of January 31, 2010,and that they expected everybody to be out by February 1, 2010.

As far as the landlord was concerned, the tenancy with WD had ended on February 1, 2010, and they were entitled to vacant possession. However, On February 1, 2010,

they arrived to find that the other occupants, were still in the unit and TS then advised the landlord that she considered herself to be a valid tenant pursuant to a new verbal tenancy agreement between her and the landlord. The landlord stated that when they informed TS that they would not rent the unit to her, she stated that she would be filing for arbitration. TS had set up residence in the unit with no intention to leave.

The landlord testified that they considered TS to be a trespasser. However, their efforts to have the occupants removed were not successful as the police referred them to seek a resolution through the Residential Tenancy Act. The landlord testified that, although the landlord did not consider TS and the other occupants to be tenants, the landlord had no choice but to issue a Ten-Day Notice to End Tenancy against the existing occupants who had illegally taken over the unit.

The landlord testified that in mid-February they also attempted to have the hydro, which had reverted back to the landlord's name after WD left in mid January, disconnected. However BC hydro refused to terminate the service so long as there were occupants in the unit. The landlord received a bill for $150.00.

The landlord was seeking to have th Ten-Day Notice that was served on the three occupants, including TS, enforced and sought to be granted rent owed for February and March 2010, claiming a total of $4,350.00 in compensation.

The purported tenant, TS, testified that she, and the others, had lived with WD while he was a tenant and after he left in mid January, they all remained in the unit with his permission. According to WD, on January 26, 2010, before the month ended, she engaged in a conversation with the landlord and they verbally agreed that she could rent the unit for $1,500.00, with a security deposit of $750.00 and that the utilities would be put in her name. The tenant TS stated that she then cancelled another housing opportunity with the expectation that she would be entering into a formal tenancy agreement with this landlord as of February 1, 2010 . TS testified that on January 28, 2010, two days before the new tenancy was to start, the landlord informed her that no tenancy agreement would be made with her and that she was to vacate at the end of WD's tenancy by February 1, 2010. TS testified that she objected to this change of

mind on such short notice and refused to vacate. The tenant considered herself to be a tenant based on the verbal conversation held on January 26, 2010 which could not changed as a legal tenancy agreement was made. TS has remained in the unit since.

Tenant TS stated that the Ten-Day Notice was not warranted as she had attempted to pay her agreed-upon rent but the landlord refused payment. TS stated that she was always, and still remains, willing to pay rent owed and can give the landlord all arrears as well as the security deposit in the amount of $5,250.00, today. The tenant stated that she had the hydro hooked up in her own name and has received an invoice from BC Hydro for hydro used in the amount of $372.04.

Tenant TS's position is that, because the landlord agreed to a tenancy and then tried to change its mind after-the-fact, she was rightfully entitled to take possession of the unit as of February 1, 2010, and was already in valid possession of the unit prior to the date that the new tenancy was to start by virtue of her own arrangement with WD. The tenant TS is asking that the Notice be cancelled and that the alleged tenancy be preserved.

Analysis: END OF TENANCY

Section 62(1) of the Act gives a Dispute Resolution Officer the authority to determine:

- disputes in relation to which the director has accepted an application for dispute resolution, and
- any matters related to that dispute that arise under this Act or a tenancy agreement.

I find the following:

- This landlord had a tenancy agreement with WD and only with WD in January 2010.
- The landlord accepted notice from the tenant WD stating that this tenancy relationship would end as of January 31, 2010.
- In January 2010, during which the landlord had an active tenancy agreement with WD, the landlord did not have any tenancy relationship with any other person including TS.

- When the tenancy relationship with WD ended on January 31, 2010, the landlord was legally entitled to vacant possession of the rental unit, regardless of what arrangements WD had with any third parties.
- On January 26, 2010, the landlord entered into verbal negotiations with a new party, TS, to form a tenancy agreement for this individual to rent the premises and take possession as of February 1, 2010.
- TS happened to already be staying in the unit on January 31, 2010 by virtue of an unrelated arrangement solely between herself and the former tenant WD.
- On January 28, 2010:
    - a) if the landlord is to be believed, the landlord rejected the negotiation before it was ever settled

      or
    - b) if the tenant, TS, is to be believed, after the tenancy agreement was already made, the landlord suddenly backed out of the verbal commitment to give TS legal possession of the unit on February 1, 2010.
- Tenant TS, who was already in the unit, never surrendered the vacant possession to which the landlord was legally entitled when the tenancy with WD ended on January 31, 2010.

Section 16 of the Act states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 13, of the Act, places the responsibility for a written tenancy agreement onto the landlord . I find that, based on the evident past practice of this landlord, it would appear that if there was an agreement finalized between these parties, it would likely have involved a written tenancy agreement rather than the oral discussion described by tenant TS. Verbal tenancy agreements are, however, recognized under the Act and can be enforced. In fact, section 1 of the Act, defines “tenancy agreement” as follows:

> *"tenancy agreement" means 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;

Where verbal terms are clear and in situations where both the landlord and tenant agree, there is no reason why such terms can be enforced. That being said, it is evident that parties may end up interpreting verbal terms in drastically different ways. Where certain issues and expectations are verbally established between the parties, these terms are always at risk of being disputed. Obviously, by their nature, verbal terms are virtually impossible for a third party to interpret in order to resolve disputes as they arise.

When a landlord or tenant enters into an agreement to start a tenancy, they are both legally bound to that agreement under the Act whether it is verbal or in writing and in this instance, I accept the tenant's testimony that the landlord did make a verbal commitment with TS for a tenancy that was to scheduled to start on February 1, 2010. I accept that on January 28, 2010, the landlord then reneged on this tenancy agreement before it started and before the tenant, TS, was ever entitled to legal possession which was to occur effective February 1, 2010.

Because the landlord ended the agreement prior to the actual possession date, I find that the tenancy never began as it should have under the contract. The landlord wrongfully cancelled the contract and was in breach of the Act by doing so.

Under such circumstances the tenant would be entitled to claim monetary damages for the breach of law and contract. The tenant is not, however, entitled to go ahead and forcibly seize possession of a rental unit and take it upon herself to enforce the contract or the Act on her own without going through the legal channels available under the legislation. Just as a tenant who reneges on a promise to move in cannot be forcibly compelled to move in and live in a unit, a landlord who withdraws an offer of housing prior to the date of possession under the contract would not necessarily be forced to physically relinquish the rental unit and surrender possession to the injured party.

In this case, I find that the tenant merely decided to appropriate the premises because she was able to make this happen by virtue of an arrangement with the previous tenant that placed her in the unit at the moment the tenancy with WD ended. I find that TS, who did not have any role as a tenant at that precise time, simply refused to turn over

vacant possession to the landlord on January 31, 2010, perhaps under the mistaken belief that she was legally able to do so based on the verbal tenancy agreement formed on January 26 and rescinded by the landlord on January 28, 2010, in advance of the contractual occupancy date.

I find that the tenant's remedy for the landlord's failure to complete the agreement, should take the form of a monetary claim for damages, rather than an after-the-fact order of possession to force specific performance. The tenant did not make an application under section 67 but I find that she is at liberty to pursue this remedy under the Act. That being said, however, I also find that the tenant has already financially benefitted by residing in the unit for over two months valued at $1,500.00 per month. I find that this would function as generous compensation for any loss or damages that may have resulted from the landlord's breach.

I find that the tenant's actions in failing to relinquish possession and forcibly occupying the unit cannot be defended under the Act and based on the testimony, evidence and the Act, I find that this landlord's legal right to possession occurred on January 31, 2010. Accordingly the landlord will be issued an Order of Possession based on WD's original notice to end tenancy in compliance with the Act and that agreement.

Analysis: NOTICE TO END TENANCY

I find that the Ten-Day Notice to End Tenancy was not issued by the landlord to a tenant and is therefore not a valid notice. I find that the Notice was therefore of no force nor effect and the monetary claims are dismissed.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The remainder of the landlord's application is dismissed in its entirety, without leave to reapply. The remainder of the tenant's application is also dismissed in its entirety,

without leave to reapply.

Dated: April 2010

Dispute Resolution Officer