



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy. During the hearing the male landlord verbally requested an order of possession.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

Both parties submitted evidence to the Residential Tenancy Branch but due to some misunderstandings did not serve each other with their evidence. As a result, I have not considered any of the documentary evidence submitted by either party in making this decision but have relied solely on the testimony provided in the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the male landlord is entitled to unilaterally change the terms of the current tenancy and to an order of possession, pursuant to Sections 1, 46 and 55 of the *Act*.

Background and Evidence

The parties agree the tenancy began in March 2008 as a month to month tenancy for a current monthly rent of \$900.00 due on the 1st of the month and that a security deposit of \$300.00 was paid by March 1, 2008. No written tenancy agreement was established.

The male and female landlords agree that in May of 2008 they separated and the male landlord took up residence at a different location. The male landlord testified that the original tenancy agreement was solely with him and that the tenant had originally provided him with post dated rent cheques. The female landlord testified that she thought the tenancy was between both landlords and the tenant.

The male landlord stated that after he left the marital home the tenant acted in bad faith and changed her bank account thus rendering the cheques null and void. The female landlord testified that she instructed the tenant, at the time, to cancel the post dated cheques and begin to pay the rent to her.

The male landlord stated that he did not address the issue at that time because he was negotiating a separation agreement. He stated he did not want to jeopardize those negotiations and felt that because the tenant was friends with the female landlord it would complicate the negotiations.

The male landlord indicated that a separation agreement was finalized in December 2010 and based on this and advice from legal counsel he decided to deal with the issue. He provided the tenant with a letter advising her he was the sole landlord and provided a new written tenancy agreement.

The male landlord contends the tenant did not sign the tenancy agreement and that she indicated that she had already paid January 2011 rent but that when she did not pay rent to him for February 2011 he issued a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant disputed that notice and the notice was cancelled by order of a Dispute Resolution Officer (DRO) in a decision dated February 15, 2011. In that decision, the DRO wrote "Until the tenant receives a written tenancy agreement with specific terms, including who the landlord is, the tenancy will continue as previously agreed."

The male landlord testified he drafted another tenancy agreement that the tenant did not sign and that when he failed to receive rent from the tenant on March 1, 2011 he issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 2, 2011. The tenant and the female landlord agreed that the tenant had paid rent when it was due.

Analysis

In the case of verbal agreements, I note where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

While I cannot make any determination, based on the testimony provided, as to who was identified as the landlord or landlords at the start of the tenancy, I accept that the female landlord instructed the tenant to start paying the rent to her when the landlords physically separated.

In addition, although I accept the male landlord's explanation as to why he took no action to correct this situation for over 2 years, I find the landlords have established, at least by practice, that the tenant may pay the rent to the female landlord.

As both the tenant and the female landlord agree that rent was paid in full for the month of March 2011 when it was due, I grant the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued by the male landlord on March 2, 2011.

As I have cancelled the 10 Day Notice to End Tenancy for Unpaid Rent, I find the male landlord is not entitled to an order of possession pursuant to Section 55 of the *Act*.

Section 1 of the *Act* defines a landlord, in relation to a rental unit and among other things, as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under this *Act*, the tenancy agreement.

Based on the testimony provided and in the absence of any documentary evidence confirming who is the owner of the rental unit, I find that until otherwise determined by a court of competent jurisdiction as to the separation of the marital assets the tenancy must continue with both male and female landlords as *the landlord*.

The current dispute is between the two landlords and neither landlord has the right to impose any impact of that dispute upon the tenant. I order that any and all landlord decisions regarding the tenancy must be made between the two landlords and that any decisions that impact the tenant must be agreed upon by the landlords prior to involving the tenant.

Conclusion

For the reasons noted above, I find the tenancy to be in full force and effect.

As the tenant was successful in her application I find that she is entitled to recover the filing fee of \$50.00 for this application. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a).

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: March 17, 2011.

Residential Tenancy Branch