



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking for an order to cancel a One-Month Notice to End Tenancy for Cause dated September 12, 2011. The tenant was alleging that the Notice was issued by her co-tenant and not the landlord. The tenant was also seeking monetary compensation for the wrongful termination of the tenancy.

Both parties appeared and gave testimony.

Preliminary Matter

At the outset of the hearing the applicant tenant, (hereafter referred to as Co-tenant "D") testified that the One Month Notice to End Tenancy for Cause was not issued by owner/landlord, the "Township", but was instead issued by her co-tenant, (hereafter referred to as Co-tenant "B"), with whom she had equally shared the rental unit since January 1, 2011. In support of the applicant tenant's allegation that the two parties in this dispute were co-tenants, the applicant tenant pointed out that, although her portion of the \$1,200.00 monthly rent was collected by Co-tenant "B", and paid on their behalf to the owners, the tenancy was actually shared fifty-fifty between Co-tenant "D" and Co-tenant "B". According to the applicant tenant, this co-tenancy involved the equal sharing of hydro, gas, phone, internet and even the insurance which was in both their names. The applicant tenant had submitted a copy of her original tenancy application form into evidence and pointed out that, from the outset, she was considered as an equal party to the verbal tenancy agreement formed on January 1, 2011, along with Co-tenant "B", to rent this property from an individual who had possession at the time and she had not ended her tenancy relationship since that time. This individual evidently turned his landlord role over to the owner, namely the Township, who then collected rent from the two co-tenants.

The tenant advised that she had already been forced to vacate because of the fact that the landlord/owner had inexplicably entered into a new tenancy with the respondent, Co-tenant "B", despite the fact that her existing co-tenancy was still in place.

Therefore, I find that the matter of the Order of Possession based on the One Month Notice to End Tenancy for Cause is now moot.

Issues to Be Determined

The remaining issue to be determined is whether the tenant is entitled to receive a monetary order for wrongful termination of tenancy.

Background and Evidence.

The applicant/tenant testified that she and the respondent, Co-tenant "B" shared the unit as co-tenants for a number of months. The tenant testified that at one point during the tenancy, Co-tenant "B" had suddenly asked her to move out because Co-tenant "B" decided she wanted to share the unit with different person instead of Co-tenant "D".. The applicant/tenant testified that when she declined the request to move out, Co-tenant "B" then informed the tenant that she was now acting as landlord with respect to their relationship. According to the applicant tenant, Co-Tenant "B" then proceeded to issue a One Month Notice to End Tenancy for Cause to the applicant tenant, (Co-tenant "D"). The applicant tenant testified that at no time did she ever terminate her tenancy with the owner/landlord and never had any intent to give notice to do so to either her landlord nor to her co-tenant.

According to the applicant tenant, Co-tenant "D" then advised her that, as of September 1, 2011, the owner of the property recently signed a new written tenancy agreement only with Co-tenant "B". The applicant tenant testified that this new agreement was entered into while she was still a tenant and still had a legal right to possession of the rental unit. The applicant tenant testified that this new tenancy agreement was not legal in that the new tenancy commenced between the Township and Co-tenant "B" without first properly terminating the original tenancy with existing co-tenants "B" and "D". . The tenant felt that she was wrongfully forced to move out because of this action and is seeking compensation for damages stemming from the illegal termination of the tenancy. However, in this application, the applicant tenant only named Co-tenant "B" in her application and failed to name the actual owner/landlord, namely the Township.

The respondent, Co-tenant "B" testified that the parties were never co-tenants, but were only "room-mates and acknowledged that on September 1, 2011, she had signed a new tenancy agreement with the owner/landlord creating a tenancy in which she was the sole tenant. Co-tenant "B" testified that she felt that this newly signed written tenancy agreement gave her power of a landlord over the Co-tenant "D" .

Analysis

I find that, section 6 of the Act states that rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution in respect of the rights, obligations and prohibitions under the Act or terms of a tenancy agreement that: (i) are required or prohibited under the Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

The Act defines "*tenancy*" as a tenant's right to possession of a rental unit under a tenancy agreement. Under the Act "*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. The Act defines "*landlord*", to include 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;

Section 13 of the Residential Tenancy Guidelines provides guidance in regard to the rights and responsibilities of co-tenants. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting all the terms of the tenancy agreement and have equal rights under the tenancy agreement.

I find that that both parties began the tenancy together pursuant to a verbal tenancy agreement with the landlord and this co-tenancy was never validly ended in accordance with the Act. I find that the two occupants shared the rent and other responsibilities equally, and therefore the applicant and the respondent named in this application were not tenant and landlord. I find that the applicant, Co-tenant "D" and the respondent, "Co-tenant "B" were in a co-tenancy with the owner/landlord under a verbal tenancy agreement since January 1, 2011 and I further find that the original co-tenancy was still in place when the applicant tenant vacated the unit on September 13, 2011.

Accordingly, I find that the relationship between the applicant and the respondent in this dispute is not that of "tenant and landlord" under the Act. I find that I therefore lack authority to hear nor decide this matter. Accordingly, this application cannot proceed against the respondent named and must be declined due to lack of jurisdiction. The applicant tenant is still at liberty to pursue dispute resolution with respect to a claim she may have against the actual landlord of this co-tenancy.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that dispute in this application cannot proceed as the respondent named is a co-tenant of the applicant and not a landlord. I therefore find that this dispute is not within my delegated authority to hear nor determine.

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: October 19, 2011.

Residential Tenancy Branch