



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF

Introduction

The parties previously attended a hearing by way of conference call on January 4, 2012. That hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for unpaid rent or utilities / and recovery of the filing fee. The conference call hearing was adjourned in favour of a face-to-face hearing, principally in order to provide the parties with an opportunity to fully and properly exchange documents between them, as well as to facilitate the giving of testimony. Both parties and those assisting them attended this reconvened hearing, and the parties gave affirmed testimony.

An Interim Decision was issued by date of January 4, 2012. In the Interim Decision it is noted that an earlier hearing was convened on December 12, 2011 in a dispute between these same parties,

...with a decision issued on that same date [file # 783884]. As a result of the hearing the dispute resolution officer set aside a 10 day notice to end tenancy as it was "not in the form required by the Residential Tenancy Act." Presently, the tenancy continues uninterrupted.

It is understood that subsequent to the previous hearing, a new notice to end tenancy has been issued. However, there is no copy of such a notice in evidence before me. Additionally, legal counsel representing the tenant states that he has not received a copy of the tenancy agreement submitted in evidence to the Residential Tenancy Branch (the "Branch") by the landlord.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Documentary evidence includes, but is not limited to, affidavits sworn by the following persons: BSG (landlord); SSG (tenant's husband); RKG (tenant's sister-in-law), and HKS (tenant's aunt).

The understanding is that early in 2011, the tenant's husband entered into an agreement with the landlord and either 2 or 3 other members of his family to purchase the subject unit, which is a house. It is also understood that the tenant and her husband and two children have lived in the house since January 2011. Further, it is understood that the tenant and her husband have, during that time, shared the house with the landlord's brother and his wife.

Pursuant to the affidavit sworn by the tenant's sister-in-law, when the tenant and her husband moved into the house in January 2011,

they paid \$20,000.00 towards one third share of house and promised to pay \$600.00 as [their] share in mortgage. They have been paying \$600.00 to my husband every month towards the rent / mortgage payment for living in the house referred to above. This payment of rent / mortgage payment was being done by [the tenant's husband] till October 2011.

Somewhere in October when [the tenant's husband] did not pay the rent, the [landlord] along with his other three brothers came to the property and told the [tenant] either to pay the money or vacate the house. The [tenant] did not have money ready so I [lent] her \$3000.00.

That I had withdrawn this money from my own personal account and given it to the [tenant] to help her.

On 2nd November 2011 the [tenant] in my presence had paid this money to [ISG, the landlord's brother] as rent / mortgage in advance for the month of October, November, December, January and February 2011.

There is no receipt or bank records in evidence to support the completion of the transactions referred to above.

In the affidavit sworn by the tenant's aunt, she states in part:

That in the month of October 2011 [the tenant's husband] left the [tenant] and the children and started living separately after a long ongoing trouble with the [tenant].

Further to the affidavits there is an undated written tenancy agreement between the landlord and the tenant's husband. According to this agreement, a month-to-month tenancy began on September 1, 2011, where monthly rent of \$2,000.00 is payable in advance on the first day of each month. The agreement also indicates that a security deposit of \$500.00 was collected on September 25, 2011.

Evidence also includes the copy of a 10 day notice to end tenancy for unpaid rent dated December 12, 2011. The parties appear to agree that the notice was served in person by the landlord on the tenant on December 12, 2011, and by way of regular mail. The notice shows that rent in the total amount of \$4,000.00 is overdue; this total is comprised of \$2,000.00 for October and \$2,000.00 for November 2011. The tenant filed an application to dispute the notice on December 15, 2011, which I find is within the 5 day period available for doing same, pursuant to section 46(4) of the Act (**Landlord's notice: non-payment of rent**).

There are conflicting accounts as to whether the loan of \$3,000.00, as earlier referenced, was used to pay "rent / mortgage" in advance, or whether no such payment actually took place.

Analysis

Based on the documentary evidence and testimony, I find on a balance of probabilities that the "rent / mortgage" payment is not a payment of rent by a tenant to a landlord; rather, I find that the payment reflects a part ownership of the unit, and a payment toward the mortgage debt which is shared between members of the same family.

Further, on a balance of probabilities I find that the creation of a document purporting to reflect the existence of a tenancy agreement between the landlord and the tenant's husband was intended, after the separation of the tenant and her husband, to achieve a continuation of regular monthly payments toward the mortgage which the tenant's husband had previously paid. In view of the tenant's husband's inability to continue to pay a share, it appears that the landlord sought to either collect payments directly from the tenant, whose personal income is limited, or to evict her for non-payment of rent in order to accommodate someone with the ability to pay a full share of the required monthly mortgage payment.

In summary, I am unable to conclude that a tenancy was created between the landlord and the tenant's husband and / or the tenant, despite the introduction of a standard tenancy agreement template. In short, I find on a balance of probabilities that the matter in dispute is a family dispute which does not fall within the jurisdiction of the *Residential Tenancy Act*.

Conclusion

In the absence of jurisdiction to consider the particulars of this dispute, the application is hereby dismissed. The parties have the option of seeking legal advice in regard to available remedies.

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: January 31, 2012.

Residential Tenancy Branch