



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, OPC

This application was brought by the tenant seeking to cancel a 10-day Notice to End Tenancy for Unpaid Rent dated January 17, 2012. The tenant was also seeking an order to force the landlord to comply with the Act or agreement.

The applicant and one of the respondents named both appeared.

Evidence included a copy of a tenancy agreement between the landlord and a former tenant (TK), who was one of the 2 respondents named in the application. Also in evidence was written testimony, a copy of a Ten Day Notice to End Tenancy for Unpaid Rent dated January 17, 2012, a copy of a previous dispute resolution decision and an order of possession for the landlord dated February 2, 2012.

Issue(s) to be Decided

The issues to be determined are:

- Whether the 10-Day Notice to End Tenancy for Unpaid Rent should be cancelled.
- Whether the landlord should be ordered to comply with the Act with respect to the tenant's right to sublet the rental unit.

Preliminary Matter

At the outset of the hearing the applicant tenants, testified that in December 2011, they first entered into a tenancy agreement with the existing tenant, TK, who had just rented the unit at that time. The applicants testified that they paid rent to TK, who was named as one of the respondents in the application.

The applicants testified that, despite the fact that they had been sharing the unit with TK from the start, they were not named on the written tenancy agreement which was signed by TK and the owner's agents.

Although named in the application as respondent, I find that TK was no longer residing in the unit and no longer had legal possession over the unit. I find that TK did not have any authority to grant the tenant possession of the unit nor to act in any capacity as a landlord at the present time. For this reason, I find that the claim by the applicant cannot proceed against the former tenant, TK.

In regard to the applicant's rights with respect to the present landlord and the property management company, named as the other respondent, I find that there was never any direct landlord-tenant relationship of any kind between these applicants and the landlord or property manager of the rental unit. Although the applicants had apparently entered into an agreement to reside in the rental unit, this contract was only between them and the former tenant, TK, who had signed a tenancy agreement with the landlord and had the right to possession of the unit until he vacated.

The tenant testified that when TK told them he was vacating the unit, he also accepted their portion of the rent for January that was to be paid to the landlord. The tenant testified that TK gave them assurances that he had arranged a "sublet" with the landlord, so that the applicants could take over the tenancy and continue to reside in the unit. The applicant tenants would then be paying the February rent directly to the landlord. However, the applicants were shocked to discover that instead of acting in their interest, TK had given the landlord notice that he was vacating without arranging a sublet and without forwarding their January rent payment to the landlord as promised. In fact, according to the applicants, the current tenant merely absconded with the applicant tenants' funds. The applicant tenants are therefore disputing the Notice to Vacate and objecting to the fact that the landlord has refused the rent and will not even consider subletting the unit to them.

The respondent landlord testified that TK, the person who had signed their tenancy agreement, fell into arrears for January's rent and then suddenly gave notice that he was leaving effective January 12, 2012. The landlord testified that, during this conversation, the tenant acknowledged that he had left some occupants still residing in the unit but was forced to leave for his own safety as he feared them.

The landlord testified that they were surprised to find that the applicants, who were still living in the unit after the legal tenant vacated, actually considered themselves to be the new tenants, and apparently believed that they would be taking over the 6-month lease from the former tenant. The landlord testified that they did not enter into a new tenancy nor a sublet with these individuals, and had no desire to do so.

I find that, in order for a legally binding contract or tenancy agreement to exist the following must be present:

- Consensus, whereby an offer is made and accepted; and
- Consideration, in which the landlord receives payment in return for the tenant acquiring possession of a rental unit; and

- Capacity, whereby all parties have the fundamental ability to be accountable for their actions and possess the mental ability to understand the nature and effects of their actions.

In this instance I find that, without entering into a new and mutually agreeable tenancy agreement meeting the above criteria, I find that the applicant has none of the rights as a tenant and the owner has no responsibilities under the Act.

Given the above, I find there exists no genuine tenancy agreement between these two parties. Although the applicant occupies the premises in question, I find that these occupants are not tenants and the respondent is not their landlord because the original agreement did not include the applicants and no subsequent agreement or sublet was ever signed.

Having found that no tenancy exists as defined by the Act, the relationship and matters under dispute do not fall under the authority of the Residential Tenancy Act. Therefore the application cannot proceed and must be dismissed.

In addition to the above, I find that after the respondent tenant, TK, gave notice to end the tenancy and vacated the unit, the landlord duly obtained a legal order of possession for the unit through a dispute resolution hearing held on February 2, 2012. I find that the landlord now has the right to legal possession by virtue of the Order issued on February 2, 2012. A dispute resolution officer's decision is final and binding and I do not have the authority under the Act to alter that decision.

Section 62(4)(b) of the Act states that a dispute resolution officer may dismiss all or part of an application for dispute resolution if the application does not disclose a dispute that may be determined under this Part.

Based on the evidence, I hereby dismiss the application without leave to reapply. The applicant is at liberty to seek remedy against TK in another legal forum.

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: February 20, 2012.

Residential Tenancy Branch