



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL
 CNL FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed to obtain an Order of Possession for landlord's use of the property.

The Tenant filed to cancel a notice to end tenancy for the landlord's use of property and to recover the cost of his filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue(s) to be Decided

- 1) Have the parties entered into four separate tenancy agreements or is there one tenancy agreement that pertains to the four rental units?
- 2) Is the Tenant authorized to act as a Landlord for units 2, 3, and 4?
- 3) If not, what is the status of those who are currently residing in units 2, 3, and 4?

Background and Evidence

At the outset of the hearing I informed both parties that today's hearing would involve clarification of the preliminary issues, as listed above, after which I would make a determination if these cross applications could proceed as filed. During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me today.

The Landlord affirmed that he purchased this property in December 2011 at which time he was advised by the previous owner that the Tenant was renting and occupying all four units under one tenancy agreement. He states he recalls being given a copy of the

lease between the previous owner and the Tenant which clearly indicates these units were rented to one tenant under one tenancy agreement. He claims that the Tenant has sublet three of the units without his permission.

The Tenant affirmed he had four separate written tenancy agreements with the previous owners but he did not know at this time where those documents were. He provided the approximate years he rented each unit and the current amount of rent paid for each separate unit as follows:

Unit #1 – occupied by the Tenant –	Rented in 2000 Monthly Rent \$620.00
Unit #2 – not occupied by this Tenant -	Rented in 2007 Monthly Rent \$675.00
Unit # 3 - not occupied by this Tenant -	Rented in 2002 Monthly Rent \$685.00
Unit # 4 - not occupied by this Tenant -	Rented in 2005 Monthly Rent \$670.00

The Tenant stated that because he was the person who rented all four units that he just added up the rent for each one and considered his rent payment to be \$2,650.00 as it was easier to think of the payments as one. He later stated that he has never signed a tenancy agreement listing all four units and that the only evidence he believes he has to prove each unit was a separate tenancy would be his bank records which would indicate when the monthly payments increased as he rented another unit.

The Tenant advised that he had verbal permission from the previous owner to be able to rent out the three other units. He confirmed he has never had written permission to do so, he has never discussed this matter with the current Landlord, nor has he entered into a written agreement with the current Landlord.

In clarifying his position with respect to units 2, 3, and 4, the Tenant stated he has been considered a “de facto landlord” by the *Residential Tenancy Branch* in a previous dispute resolution hearing that he initiated against one of his former tenants, therefore he assumes he is a landlord and the occupants of these units would be his tenants.

The Tenant confirmed he has never had written or verbal permission to act as an agent for either the previous owner or the current owner. He stated that he does not have the authority to initiate any business to do with these units such as repairs or maintenance on the property and if anything requires fixing in any of the units he would inform the Landlord and request that it be repaired. He simply arranges to have people occupy the other three units for rent which they pay directly to him. He in turn pays his required rent to the owner of the property.

In closing each party was ordered to submit any additional evidence they wished to rely on in support of the aforementioned via fax, no later than 11:00 a.m. Friday February 24, 2012.

Analysis

A fax was received from the Tenant February 24, 2012, which included a written statement from the Tenant, an appliance repair invoice issued in a different name, a copy of an Order issued from the *Residential Tenancy Branch* December 17, 2009, listing the Tenant as a landlord, and two pages of a bank statement that shows debits of \$1,965.00 and \$685.00 on January 5, 2011 and June 1, 2011.

A fax was received from the Landlord February 24, 2012 and included an “application for rent of suite” for unit # 2 signed by the Tenant, a document titled “conditions of tenancy”, a written statement from the Landlord, and copies of registered mail receipts.

Copies of the above materials that were received by fax are attached at the end of this decision to ensure each party has the opportunity to review the documents provided by the other; in support of the principles of natural justice.

I have carefully considered the aforementioned, and the documentary evidence which included, among other things, applications for dispute resolution filed by both the Landlord and the Tenant, a 1 Month Notice to End Tenancy for Cause issued to the Tenant listing the address as unit “1-4”, a 2 Month Notice to End Tenancy for Cause issued to the Tenant listing the address as unit “1-4”, and three additional 2 Month Notices naming the occupants of units 2, 3, and 4.

Section 1 of the Act defines a tenancy agreement as follows: A “**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. [My emphasis added].

In this case the evidence supports the Tenant began renting unit # 1 in approximately 2000, unit # 2 in 2009, unit #3 in 2002, and unit # 4 in 2005 and each unit was rented for a different amount. Although there is evidence of an “application for rent of suite” for unit # 2, there is insufficient evidence that there were written tenancy agreements or that there was one written tenancy agreement that was amended to add each additional unit. Therefore, on a balance of probabilities, I find the Tenant entered into four separate tenancy agreements for each of the units (1, 2, 3, and 4) and that the terms of

each agreement, such as the monthly rental fee, were determined based on each individual unit at the time they became available for rent.

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas.

Section 1 of the Act defines a landlord, in relation to a rental unit, to include any of the following:

(a) 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;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who [emphasis added]

- (i) is entitled to possession of the rental unit, and
- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this; [My emphasis added]

The evidence supports the Tenant has no authority or obligation to act as Agent to the Landlord or to maintain the rental property under the Act, and therefore does not meet the definition as a landlord under the Act.

Section 57(2) of the Act provides that each decision or order of the Director is based on the merits of the case as disclosed by evidence admitted and that the Director is not bound to follow other decisions. As each dispute resolution proceeding turns on the facts of each particular case that are presented by the parties, the decision(s) referred to by the Tenant in support of his position as being a landlord and the January 18, 2012 decision are not precedent setting and do not form a basis to conclude the occupants of units 2, 3, and 4, are tenants pertaining to this dispute.

As per the aforementioned, for the purposes of this dispute, I find the Tenant as named in this dispute, to be the Tenant of each tenancy agreement for each individual rental unit (1, 2, 3, and 4). Furthermore, I find for the purposes of this dispute, that all parties who occupy units 2, 3, and 4, are considered occupants.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

As I have determined above that there is four separate tenancy agreements between these parties the Landlord is required to serve a separate Notice to End Tenancy clearly identifying each unit's address and listing the Tenant who is named in this dispute as the Tenant for each rental unit, in accordance with section 52 of the Act.

As per the aforementioned, and upon review of the Notices to End Tenancy that were submitted in evidence, I find the Notices not to have been issued in accordance with sections 52 and 49 of the Act as they do not clearly indicate the address of each rental unit. The Notices which were issued to the occupants of units 2, 3, and 4, are not valid as they are not tenants to this dispute. Accordingly the Notices are hereby cancelled.

Furthermore, individual tenancy agreements cannot be combined in one application for dispute resolution. I recommend the parties contact the *Residential Tenancy Branch* for further guidance on how best to make their applications in order to have the disputes heard in the most efficient manner.

The Tenant's application has not been completed in a manner that clearly identifies the rental unit address, and is therefore dismissed. Accordingly the Tenant must bear the burden of the cost to file his application.

Conclusion

I HEREBY DISMISS the Landlord's application.

I HEREBY DISMISS the Tenant's application.

The 10 Day Notice to End Tenancy for unpaid rent issued February 9, 2012, is HEREBY CANCELLED and is of no force or effect.

The 1 Month Notice to End Tenancy issued February 10, 2012 is HEREBY CANCELLED and is of no force or effect.

All 2 Month Notices to End Tenancy issued to the Tenant and occupants dated January 25, 2012 are HEREBY CANCELLED and are of no force or effect.

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 23, 2012.

Residential Tenancy Branch