



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Norman Estates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, OPB, CNR, MNR, MNSD, OLC, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied:

- On April 15, 2013 for:
 1. An Order cancelling a Notice to End Tenancy – Section 46;
- And on March 27, 2013 for:
 1. An Order cancelling a Notice to End Tenancy – Section 46;
 2. A Monetary Order for compensation or loss - Section 67;
 3. An Order for the Landlord’s compliance – Section 62;
 4. An Order for the reduction of rent – Section 65; and
 5. Other.

The Landlord applied on March 25, 2013 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. An Order to retain all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Do the Parties have a tenancy?

Is the Notice to end tenancy valid?

Background and Evidence

The Tenant states that she has never resided in suite A. The Tenant states that she did have a tenancy in suite B but that this ended when she sublet the suite indefinitely to the current tenant, the Witness, for March 1, 2012 with the knowledge and consent of the Landlord. The Tenant states that the Witness paid the rent to the Landlord directly after the first month of the Witness's occupancy of suite B. The Witness confirms that his rent was paid in cash directly to the Landlord who refused to provide rent receipts. The Tenant states that the Landlord has since refused to accept rent from the Witness and as a result the Tenant has paid the rent for the Witness starting in February 2013.

The Tenant states that a 3rd party moved into suite A on April 15, 2012 after the Landlord requested that she obtain a tenant for suite A. The Tenant states that she collected the security deposit and rent for this suite and gave it to the Landlord for the duration of her tenancy. The Witness states that upon his residence in suite B, he also collected the rent for suite A and gave it to the Landlord. The Tenant and Witness each state that the tenant for suite A moved out as of February 2013.

The Landlord states that he does not know if the Tenant lives at the residence or not as sometimes she pays rent and other times she does not live there. The Landlord states that the first time he saw the Witness was on May 7, 2013, that he never signed a tenancy agreement with the Witness, was aware that the Witness was in the unit only recently and that since the Witness was occupying the unit the Witness had to keep paying rent. The Landlord also states that he never took rent from the Witness.

The Tenant states that her claim is not in a relation to her past tenancy but in relation to the harassment she has been through with the Landlord and his repeated naming of the Tenant in his claims despite her tenancy having ended.

Both Parties referred to previous decisions in relation to the rental unit. It is noted that one of these decisions is between the Witness and the Landlord, that evidence was taken of the Witness's tenancy, that the hearing occurred on January 21, 2013 and that the outcome of the hearing provided orders for rent reduction and repairs to the unit occupied by the Witness.

Analysis

Section 2 of the Act provides that the Act applies to tenancy agreements and rental units. Although the Landlord denies that the Witness has a tenancy agreement for the unit, it is clear from a previous hearing held in January 2013 that the Landlord and Witness held a tenancy for at least one suite and that this tenancy did not include the Tenant.

Although the Landlord denies knowing about or receiving rent for both suite A and B from the Witness, I note that he also states that he has not always taken the rent from the Tenant. I consider this evidence vague and evasive. Further, I find the evidence of recent payments by the Tenant while noting that the Landlord has not provided evidence of payments from anyone, tends to support the Tenant and Witness evidence that the Landlord has been accepting rent from the Witness for nearly a year until recently. Accepting the Tenant's evidence that suite B was rented to the Witness on an indefinite basis and accepting the Tenant and Witness evidence that the Landlord accepted rent payments for both suite A and B from the Witness since at least April 2012, I find that the Tenant assigned the tenancy for suite B and that the Landlord consented to this assignment. I also find based on the Witness evidence and that the Tenant has not been a Tenant of suite A since at least April 2012. As a result, I find that the Landlord does not have a tenancy agreement with the Tenant for either suites, that the notice to end tenancy is of no effect and is cancelled. I dismiss the Landlord's application. As the remainder of the Tenant's claims in the second application is not in relation to an existing or previous tenancy, I dismiss these claims.

Conclusion

The Notice to end tenancy is not valid and is cancelled.

The Landlord's application is dismissed.

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: May 13, 2013

Residential Tenancy Branch

