



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OLC, LRE, OPT, LAT, AS, FF, O

Introduction

This hearing dealt with the tenant's application for numerous orders including a monetary order. One of the respondents, FG, appeared. Although served with the Application for Dispute Resolution, Notice of Hearing, and Amended Application for Dispute Resolution, the respondent LL did not appear.

The tenant was represented in the hearing by an agent. The agent participated actively in the hearing ensuring that his client's concerns regarding confidentiality of personal information were addressed, that certain points were made or clarified, providing some personal evidence, and presenting a final summation and argument.

After the tenant and FG had testified, the tenant had presented her rebuttal evidence, and the tenant's agent had made his final argument, and just as I was confirming the parties' addresses and fax numbers, the tenant stated that her witness had not been called. The agent stated that it would not be necessary to call that witness. There then ensued a discussion about what the witness might say and whether the witness was necessary. The tenant stated that the witness could verify her testimony about the stress she had endured and this evidence was important to her claim for aggravated damages. Her agent repeatedly advised the tenant and me that the witness' testimony was not necessary as I already had all the information I required before me. He also reminded the tenant of a conversation they had had earlier that morning.

As this discussion took place minutes before the time allotted for the hearing was about to expire, and as the purpose of the witness' testimony was to reiterate the tenant's own evidence about the stress she experienced, testimony that was not contradicted by the respondent, I decided that the interests of the parties were better served by a speedy decision than by ordering a continuation of the hearing some weeks in the future. I closed the hearing without hearing the tenant's witness.

Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction over this dispute?

- If so, is the tenant entitled to any of the orders requested and upon what terms?

Background and Evidence

The rental unit is a suite in the lower level of a house. The tenancy commenced February 15, 2013, although the tenant moved in a few days earlier. The monthly rent of \$1000.00, which included all utilities, was due in two equal payments; one on the first day of the month and the second on the 15th day of the month. Later the rent was reduced to \$975.00 to reflect the fact that the Internet connection was not working. The tenant paid a security deposit of \$437.50. There was not a written tenancy agreement.

As it turned out, the person the tenant rented from, LL, was a tenant herself. LL rented the entire house, lived in the upstairs level, and rented the basement suite to the tenant. The tenant testified that she has not told by LL that she was not the owner of the property.

Unfortunately, the tenant was also not told that LL had a fixed term tenancy agreement that was going to expire on June 30, 2013 and that she did not intend on renewing her tenancy.

At the beginning of May LL notified the tenant that she would have to move out at the end of June. The tenant did not file a copy of the original communication but an e-mail from LL to the tenant dated May 9, 2013 makes reference to it: "I want to remind you again please read few days email about vacating the house at the end of June this year. I just want to make sure you will find enough time to find a new place. I will send you a letter if this email message is not enough."

The tenant replied: "thanks for giving me the notice, I have started looking around for another place and should be able to be out by then and maybe sooner if something comes up. Of course it's an inconvenience and I appreciate your giving me a few weeks with no rent to help cover the inconvenience/expense of having to leave so quickly. . .".

The owner of the property has retained an agent, FG, to show the unit. FG made arrangements with the tenant to show the unit on May 7 and May 14. LL also sent the tenant an e-mail on May 6 about a showing on May 7.

There was some difficulty with the lock to the rental unit at the May 14 showing. On May 18 LL sent the tenant an e-mail advising her there was going to be showings on May 19 and May 20 and asking the tenant to leave the door open. The showing on May

19 did not occur. On May 20 the tenant left the unit prior to the time set for the showing and left the door locked. She testified that she knew FG did not have a key for the unit. While she was out she received a message from the agent that she had changed the locks and left a key for the tenant. The tenant was very upset by this information.

By this time the tenant had discovered that finding a new place might be a challenge. She also had also some research and had come to the conclusion that the *Residential Tenancy Act* was not being followed, that she had rights as a tenant, and that the process for ending the tenancy should be conducted differently.

The tenant wrote LL an e-mail outlining her concerns and her view of the applicable law. LL responded on May 23 by forwarding a copy of an e-mail from FG, which quoted some information from the Residential Tenancy Branch, and by advising the tenant there was going to be another showing later that day.

The tenant filed this application for dispute resolution on May 21. On May 23 when the agent attended at the unit the tenant served her with the application for dispute resolution and refused entry to the suite. The police were called and attended. Since then, there have been no requests for viewings and no further contact between the tenant and LL or FG.

The tenant testified about the impact this series of events has had on her; including the stress of knowing the agent had a key to her unit, the stressful and often embarrassing encounters with potential landlords, the embarrassment of having to provide information about her situation to her child's teachers; the distress caused to her child; the time away from her business; and the delay this will cause to the process of repairing her credit.

The tenant's representative argued that by dealing directly with the tenant instead of going through LL, FG's actions implied an acceptance of an assignment of the tenancy from LL to FG. He further argued that by assuming the role of landlord, FG became the tenant's landlord instead of LL.

Analysis

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only resolve disputes that are within the jurisdiction created by the statute.

Section 2 states that the Act applies to all tenancy agreements.

“Tenancy agreement” is defined as: “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 license to occupy”.

“Landlord” is defined as:

- the owner of the rental unit;
- the owner's agent;
- a person acting on behalf of the owner; or,
- a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement. (Emphasis added).

LL is renting the whole house from the owner of the property, which makes her a tenant occupying a rental unit. As such, she is specifically excluded from the definition of “landlord” and therefore, any arrangement she makes to sublet a portion of the rental unit is excluded from the operation of the *Residential Tenancy Act*.

The tenant argued through her agent that FG had assumed the role of landlord, thereby bringing her within the definition of landlord and the dispute within the jurisdiction of the Residential Tenancy Branch. Assuming that this is a correct statement of the law - a point on which no decision is made - the evidence does not support that argument. LL continued to act as a landlord throughout this dispute. She collected the rent from the tenant, advised the tenant she would have to move, and negotiated a rent rebate for June. She also notified the tenant about almost all of the showings in advance, including the last showing on May 23, and asked the tenant to leave the unit open for some of those showings.

FG merely acted as an agent for the owner of the property by arranging and conducting the showings of the rental unit. In the course of her interaction with the tenant she gave the tenant her understanding of the law, namely that a sub-tenant's tenancy ends when the tenant's tenancy ends, which is an accurate statement of the law. She also passed on information she had received from the Residential Tenancy Branch about the possible involvement of the police to LL and to the tenant, which again was an accurate statement of one possibility under the law. In taking these actions FG was only trying to clarify the situation for the tenant so FG could exercise her responsibilities as the owner's agent.

As far as FG's action in changing the locks there is no evidence that she took this action on her own accord without the consent of the owner of the property. Accordingly this

action cannot be construed as evidence of FG stepping outside of her jurisdiction as agent for the owner.

Conclusion

The Residential Tenancy Branch does not have jurisdiction over this dispute.

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: June 24, 2013

Residential Tenancy Branch

