



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened in response to an application by the Tenant pursuant to section 46 of the *Residential Tenancy Act* (the “Act”) for an Order cancelling notices to end tenancy.

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

Issue(s) to be Decided

Are the notices to end tenancy valid?

Is the Applicant entitled to a cancellation of the notices to end tenancy?

Background and Evidence

The Applicant states that she has lived in the unit since 2011 when the Respondent bought the unit and gave it to her to live in and that the matter is not one of a tenancy. The Applicant states that she had a personal relationship with the Respondent from 2009 until two months ago when she brought her infant twin grandchildren into the unit to assist with their care due to their premature birth. The Applicant states that the Respondent has not lived with the Tenant at this unit and that the Applicant and Respondent continue to share care and control of the pets that they bought together and that remain with the Applicant. The Applicant provided a written statement detailing the relationship between the Parties, a witness statement of that relationship and documentary evidence in relation to the Parties relationship, including an unsigned copy

of a will dated August 11, 2009 that appoints the Applicant as a substituted Executor and Trustee and a beneficiary of the Respondent's estate. The Respondent states that he does not have a personal relationship with the Applicant. The Respondent was reluctant to elaborate on the Parties previous relationship but did state that they were friends.

The Applicant provided copies of two notices to end tenancy for unpaid rent given to her and it is noted that the first notice, dated May 14, 2013, indicates that \$700.00 in rent is unpaid for April 1, 2013 and the second notice, dated May 22, 2013, indicates that \$3,200.00 in rent is unpaid. The Applicant states that she received the last notice from the Agent who was previously unknown to the Tenant.

The Applicant states that the Respondent never told her any amount of rent was payable from herself at any time during their relationship. The Applicant states that until recently she has had roommates and that she collected monies from these persons and provided it to the Respondent and that he was happy to take any amount she gave him. The Applicant states that while she had roommates she usually gave him \$700.00 to \$800.00 per month, that the last time she gave the Respondent any money was sometime in April 2013 and the amount given was around \$300.00. The Respondent states that he has received "\$350.00 here and \$300.00 there" over the last two years.

The Applicant states that prior to receiving these notices the Respondent never said anything about owing any rent and that she does not know what the \$700.00 or \$3,200.00 is based on. The Respondent states that the \$3,200.00 is based on a calculation of what the Landlord thinks the rent has been worth over the last four months at a monthly amount of \$800.00. The Respondent states that he told the Applicant when she moved in that rent was \$800.00 per month.

Analysis

A transfer of an interest in real property may not be made orally. I do not consider an unsigned copy of a will as evidence of a transfer of interest of the unit beyond a possible

transfer as a future beneficiary of the Respondent's estate. Given the lack of any other documentation in relation to the transfer of any interest in the unit to the Tenant or evidence of an interest in the property, I find that the Tenant has not substantiated that she has any interest in the property beyond that of an occupant or tenant.

Section 1 of the Act defines a tenancy as a person's right to possession of a rental unit under a tenancy agreement. This section further defines a tenancy agreement as including a licence to occupy a rental unit. Considering that the Tenant has been living in the unit since its purchase by the Owner, I find that at a minimum the Applicant has a licence to occupy the unit.

Section 44 of the Act provides that a tenancy, which includes a licence to occupy, may be ended for the non-payment of rent. Based on the Applicant, Witness and documentary evidence, I accept that the Parties had a personal relationship until very recently. I also prefer the Applicant's evidence that no rent was ever payable for the occupation of the unit by the Applicant. I base this preference on the Respondent's evidence of what I would define as the casual acceptance of smaller amounts of monies from the Applicant than what the Respondent claims as rent, no dispute from the Respondent that these monies came from the Applicant's roommates, the large discrepancy between the rental amounts owing as set out in the notices to end tenancy and the lack of any financial or other records of the Respondent in relation to rent payments from any occupant of the unit. While there was a payment of monies to the Landlord, the evidence of these monies coming only from the roommates can only support an inference that the Applicant acted as agent for the Respondent in renting out rooms.

Given the above, I find that neither notice to end tenancy for unpaid rent is valid and that the Applicant is entitled to a cancellation of the notices.

Conclusion

The notices to end tenancy for unpaid rent, dated May 14, 2013 and May 22, 2013 are cancelled and of no 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: June 27, 2013

Residential Tenancy Branch