



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TERA! CONSTRUCTION LTD  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

MNR, FF

### **Introduction**

This is an application for monetary compensation for rental arrears owed to the landlord by the tenant

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on November 1, 2013, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

### **Preliminary Matters**

#### **Tenant's Address for Service**

The landlord pointed out that the forwarding address given by the tenant and shown on the landlord's Application for Dispute Resolution form was found to be incorrect as two digits of the house number had been transposed. The landlord testified that they confirmed the correct address with the tenant and sent the Notice of Hearing by registered mail to the tenant's current address.

This was confirmed by evidence submitted by the landlord and the data already on record.

#### **Tenancy Agreement(s)**

The landlord testified that the unit was previously rented to one individual, TJ, until that another person, SC, moved in as co-tenant to share the unit.

The tenancy agreement submitted into evidence names a male, SC, and a female, TJ, as co-tenants in a joint tenancy beginning on February 1, 2013, with rent of \$850.00. A security deposit of \$425.00 is being held in trust by the landlord..

According to the landlord, \$850.00 rent for June 2013 was not paid and co-tenant SC left on June 30, 2013. The landlord testified that co-tenant, TJ, has remained living in the rental unit as the sole occupant.

The landlord is claiming \$850.00 rental arrears owed only against former SC, who apparently vacated in June 2013.

The landlord testified that TJ, now occupying unit, has since paid the \$850.00 rent each month from June 2013 onward, but no new written tenancy agreement was signed between the landlord and TJ.

I find that, beside the landlord's and tenant's signatures on the final page of the tenancy agreement, there the following handwritten statement was added:

*"SC, (The male co-tenant) will move out June 30/13. TJ, (The female co-tenant) will continue to rent (the unit) @ 850.00/ condition report to continue from Sept 17/2010"*

I find that the above term in the tenancy agreement apparently purports to change the right of possession of the unit from the two joint tenancy co-tenants, SC and TJ, to TJ as sole tenant on June 30, 2013.

I find that, under the Act, a tenancy agreement can either be a month-to-month periodic tenancy agreement, or it can be a fixed term agreement that requires the tenants to remain in the rental unit for a defined period of time and may also require them to vacate on the effective date shown for ending the fixed-term tenancy.

Section 13 (2) of the Act provides that a tenancy agreement must comply with any requirements prescribed in the regulations including:

(f) the agreed terms in respect of the following:

(i) the date on which the tenancy starts;

(ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii) if the tenancy is a fixed term tenancy,

(A) the date the tenancy ends, and

(B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. (my emphasis)

I find that this tenancy agreement appears to impose a fixed term, ending the tenancy effective June 31, 2013 for co-tenant SC only, but allows the same agreement to continue as a month-to-month tenancy for TJ, the female co-tenant, who retains possession of the rental unit.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or Regulations, b) the term is unconscionable, or c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In this instance, I find that the term in the tenancy agreement imposing a fixed term on one of the two co-tenants to vacate on June 30, 2013, while simultaneously granting continued month-to-month possession for the other co-tenant is not a tenancy term that would be considered as compliant with the Act and as such could not be enforced.

### **Issue(s) to be Decided**

Is the landlord entitled to compensation for rental arrears and compensation agreed-upon by the parties to end the fixed-term lease?

### **Background and Evidence**

The landlord testified that SC, the male co-tenant, failed to pay the \$850.00 rent owed for the month of June 2013 and the landlord is seeking compensation from that co-tenant. The landlord stated that, although co-tenant TJ was also residing in the rental unit during the month of June 2013, it was the responsibility of co-tenant SC to pay the rent as he had made a commitment to pay all of the rent.

The landlord acknowledged that no 10-Day Notice to End Tenancy for Unpaid Rent was ever issued to either co-tenant for the unpaid rent.

A copy of the tenancy agreement had been submitted, but there was no tenant ledger in evidence to document the history of the rental payments. The landlord also did not submit any evidentiary material that established the date that the male co-tenant ended this joint tenancy and vacated the unit.

### **Analysis**

With respect to rent owed, I find that section 26 of the Act states that rent must be paid when it is due, under a tenancy agreement. In this instance, I find that the tenants were in a joint tenancy during the month of June 2013, and both would be in violation of the Act, if the rent for June was not paid.

However, the landlord bears the burden of proof to show that the rent was in arrears and remained unpaid by the co-tenants.

In light of the fact that no records were submitted to establish what rental arrears were documented as outstanding, I find it unclear what transpired in June 2013.

I have already found that the term in the tenancy agreement requiring that the male co-tenant must vacate on a particular date is not compliant with the Act and would therefore not be enforceable under the legislation. I find that the landlord's failure to prove the exact date that the male co-tenant physically vacated the unit impedes a determination of what rent is owed and by whom.

I further find that an order to compensate the landlord for maintaining the tenancy with one of the co-tenants, while seeking a monetary order against the other co-tenant for rental arrears accrued during their joint tenancy, would be unconscionable.

Given the above, I find that the landlord's claim for monetary compensation has not been sufficiently proven to meet the landlord's burden of proof and the application must be dismissed.

I hereby dismiss the landlord's application in its entirety without leave to reapply.

### **Conclusion**

The landlord is not successful in the application and the monetary claim for rental arrears against one of the two co-tenants is dismissed without leave.

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 13, 2014

---

Residential Tenancy Branch

