



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, PSF, RPP, OPT, AAT, LAT, FF, O

Introduction

This hearing dealt with an application by the tenant for:

- An order that the landlord comply with the Act, Regulation, or tenancy agreement;
- an order that the landlord provide services or facilities required by law;
- an order that the landlord return the tenant's personal property;
- an order of possession for the rental unit;
- an order allowing access to the unit for the tenant;
- an order authorizing the tenant to change the locks to the rental unit; and
- a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the RTB filing fee

The tenant attended the teleconference hearing and gave affirmed evidence. The tenant named the property owner as the respondent. The respondent's brother attended the hearing and gave affirmed evidence. The respondent's brother is the named "landlord" in the current written tenancy agreement for the rental unit at issue in this dispute. The current written tenancy agreement is with MB alone (the "Main Tenant"). I will refer to the respondent and the respondent's brother jointly as the landlord in this decision (the "Landlord"). The Main Tenant also attended and gave affirmed evidence.

At the start of the hearing, the tenant advised that he no longer wishes to reside in the rental unit. For that reason, he withdraws his application for an order of possession and those other applications that would only be relevant if there were going to be a continuing tenancy.

Issue(s) to be Decided

Does the Act apply to the tenant's tenancy?

If the Act applies, is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

If the Act applies, is the tenant entitled to an order for the return of his personal property?

Background and Evidence

The Landlord provided documentary evidence prior to the hearing, including a tenancy agreement between the Landlord and the Main Tenant for the rental unit. The Landlord's position is that the Landlord does not have a tenancy agreement with the tenant in this application.

The Main Tenant gave evidence that he "sublet" his rental unit to the tenant in this application. The Main Tenant said that he intended to create a tenancy with the tenant. The agreement was not put in writing, however the Main Tenant says that they agreed the tenant would share the 2.5 bedroom apartment including the living room, kitchen, bathroom, and laundry facilities with the Main Tenant. He says he told the tenant he could "pay what you can until whenever". The length of the arrangement was to be "until he got on his feet". The Main Tenant says the tenant was supposed to be looking for his own place.

The Main Tenant says he and the tenant in this application submitted an "Intent to Rent" form to the Ministry of Social Development and Social Innovation (the "Ministry") saying the rent was \$400.00. The Main Tenant says he did not want to deal with the Ministry and so the tenant's rent cheques were sent directly from the Ministry to the Landlord.

The Main Tenant says the tenant told him on April 2, 2014 that he intended to move out for the first of the month. The Main Tenant then wrote a note to the tenant, dated April 4, 2014, which reads:

"As the legal tenant living at the above address, I hereby cancel my sublet to you for part of the above unit & request that you vacate said premises on or before May 15, 2014. If you vacate on or before April 30, 2014 you will not have to pay any additional rent or utilities. However, if you vacate on May 15, 2014, you will have to pay your share of the rent & utilities for the 15 days in May. .."

The Main Tenant's evidence is that the tenant has not returned to the rental unit since April 4, 2014. The Main Tenant also says the tenant did not have a key to the rental unit. For that reason, the Main Tenant left the door unlocked from December until the beginning of April. He intended to get a key cut for the tenant, but the tenant was supposed to ask the Landlord if that was OK and the tenant did not ask the Landlord. The Main Tenant says he starting locking the rental unit door when he went out at the beginning of April 2014. After that point, the tenant would have had to ask the Landlord (who lives upstairs) to gain entry to the rental unit.

The tenant's evidence is that he moved into the rental unit on February 1, 2014 and slept in the living room. The tenant says it was the Landlord who requested that the Ministry cheques go directly to the Landlord, and the Main Tenant did not want that arrangement. The tenant also gave evidence that he asked both the Main Tenant and the Landlord many times for keys to the rental unit.

The tenant's evidence is that he was denied entry to the rental unit and access to his belongings for the month of April 2014 despite his rent having been paid. The tenant says he has been staying with people across the lane from the rental unit. His evidence is that he has not attempted to enter the rental unit since the beginning of April. However, he says he asked for keys and access on both April 1 and April 13, 2014.

The tenant claims compensation for being evicted without notice and being denied keys to the rental unit. He did not pay rent to the friends he stayed with during the month of April but feels he should pay them. His evidence is that he has also incurred costs because he has not had access to a kitchen.

The tenant also claims he has been denied access to his possessions from the rental unit storage closet and the living room closet, including:

1. Queen-sized bed
2. Approximately 20 boxes, including a remote-controlled truck and car
3. About six plastic tote bins
4. Three remote-controlled boats (two plastic and one wood)
5. Computer tower and monitor
6. Microwave oven

The tenant disputes that he ever told the Main Tenant he was moving out. He says he was locked out of the rental unit by the Main Tenant. The tenant's position is that the "Intent to Rent" form completed for the Ministry is a tenancy agreement between the tenant and the Main Tenant. The "Intent to Rent" form is not in evidence.

The Landlord gave evidence that he witnessed an argument between the Main Tenant and the tenant in this application on March 26, 2014. As a result of the argument, the tenant became angry, left the rental unit, and did not return. He denies that the tenant ever asked him for access to the rental unit after that point. The Landlord says he twice let the tenant into the rental unit during the month of March when the Main Tenant was not home.

The Landlord says he spoke with the tenant on April 1, 2014, but the tenant did not ask him for a key. The Landlord also gave evidence that the tenant could have picked up his belongings but has not.

Analysis

I find there is no tenancy agreement between the Landlord and the tenant in this application, because the tenant in this application is not a party to the written tenancy agreement between the Landlord and the Main Tenant. I find the Landlord received the tenant's rent cheques from the Ministry, but the payments were on behalf of the Main Tenant. Since there is no tenancy agreement between the tenant and the respondent named in the Tenant's Application for Dispute Resolution, the Act does not apply. The tenant's application is therefore dismissed.

I find the Act also does not apply to the arrangement between the tenant and the Main Tenant, because there is no “tenancy” within the meaning of the Act. Section 1 defines “tenancy”:

“tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement.

In this case, the tenant had no right to exclusive possession of any area within the rental unit. He slept in the living room which is a common area. For that reason, the Act does not apply to the arrangement.

However, if I am wrong about the applicability of the Act to the tenant’s housing arrangement, I find the tenant has not proven on a balance of probabilities that the Main Tenant and/or the Landlord prevented him from accessing the rental unit during the month of April 2014. Similarly, I find the Main Tenant and Landlord have not prevented the tenant from arranging to pick up his belongings from the rental unit. I accept the evidence of the Main Tenant and the Landlord, which was consistent. Also, the tenant did not give evidence that he attempted to gain entry on any particular day and was denied. For these reasons, the tenant’s application is dismissed.

Conclusion

The tenant’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: July 4, 2014

Residential Tenancy Branch

