



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNSD, MNDC, FF

Introduction

This was an application for an Order for possession pursuant to a Two Month Notice to End a Tenancy dated July 25, 2014 with an effective date of September 30, 2014. The applicant also requested a monetary Order amounting to \$ 1,100.00 and to keep the security deposit. Both parties attended the hearing.

Preliminary Matter:

The respondents mailed the applicant their evidence by registered mail. A search of Canada Post's web site indicates that the respondent received the evidence although the respondent insisted he did not and that someone else signed for it. Accordingly I have not referred to any of the written evidence submitted by the respondents and relied solely on the respondent AS and her witness's testimony.

Issue(s) to be Decided

Is the applicant entitled to an Order for Possession and Monetary Order?

Background and Evidence

MM the applicant testified that he was not sure when this tenancy began but that an original tenancy began in 2013 and ended in July of 2014. He testified that he purchased this property with 90% of his money and his former spouse LE paid about

5%. Recently he discovered that LE is registered as a joint owner of the property and claims there is an impropriety regarding that. He admits not being listed on the original tenancy agreement but obtained a copy from LE. LE collected the rent and paid a portion to him after deducting a management fee. He was aware and consented to this arrangement. He admitted not having any contact with the tenants until July 23, 2014.

MM testified that he and LE "broke up" and he moved out in February of 2014. LE failed to pay him any rent for the unit thereafter. He wished to move back into the rental unit as "it was time" and he was "sick of the winters in Alberta." MM testified that he delivered a Notice to End the Tenancy to the respondents on July 25, 2014 as he wished to "kill two birds with one stone" meaning that he also wished to inspect the unit as he had not seen it for 10 years.

MM testified that he inspected the unit on July 26, 2014 along with another friend. On that day he learned that from the respondents that a subsequent tenancy agreement was made with them for an additional two years. He requested that the tenants allow him to change the locks and give him a copy of the new tenancy agreement. They refused and MM testified the male respondent became aggressive and called the police. MM testified he was polite throughout. MM testified he did not receive a copy of any new tenancy agreement and alleges if one exists it was obtained by fraud because he was not a party and the rent was reduced. He also claims for compensation amounting to \$ 600.00 for his accommodation in Victoria when he attended in September 2014. MM admits receiving an email from the respondents in August 2014 advising him that notwithstanding his Notice to End they were not moving out. MM asks for an Order for Possession pursuant to the Notice.

AS the respondent testified that she and the other respondent PJ entered into two successive tenancy agreements with LE only. The first began on August 1, 2013 with a fixed term ending on July 30, 2014. SS testified that the respondents entered into a subsequent tenancy agreement on June 5, 2014 with a fixed term ending on July 31, 2016 with rent in the amount of \$ 950.00 per month. AS testified that she never had any dealings with MM until July 23, 2014 when he called without identifying himself, proclaimed he was the landlord and wanted to inspect the unit. AS was suspicious and concerned as MM appeared aggressive. After consulting with LE and the RTB, MM requested proof of MM's ownership and a written 24 hour inspection notice. MM attended on July 25 banged on the door and taped an inspection notice and Notice to End the Tenancy on the respondents' door.

As testified that after negotiating an inspection date, MM attended on July 26, 2014 requested that the respondents pay rent to him. AS testified that PJ and AS told MM

they had a two year tenancy agreement and were not going to pay him rent or move out. MM demanded to see the agreement but the respondents refused to give him a copy. They also refused to permit him to change the locks and called the police because AS alleges MM became aggressive. AS testified that she emailed MM in August advising that they would not move out.

LE testified for the respondent. She testified that she is the landlord with the respondents throughout their tenancy. She testified that the original tenancy began in 2013 and ended on July 31, 2014 and that she signed a new tenancy agreement with the tenants on June 5, 2014 with a fixed term from August 1, 2014 to July 31, 2016 with rent on the amount of \$ 950.00. LE testified that on both written agreements only she was specified as the landlord and that the tenants paid rent only to her. LE testified that the respondents were good tenants and she did not wish to end the tenancy with them. LE testified that she sent an email to the respondents purporting to rescind the Notice to End the Tenancy.

Analysis

I accept LE and AS's testimony and find them as credible and straight-forward witnesses. I find that the respondents entered into both tenancy agreements with SE and not MM. The definition of landlord in the Act is as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that LE was an owner of the unit and exercised all the powers enumerated in the Act as landlord specifically when she entered into the current tenancy agreement commencing on August 1, 2014 and collected rent. MM alleged that the tenancy agreement is fraudulent. Fraud is a serious allegation and whenever it is made strict

proof is required. MM failed to supply any evidence of fraud. I therefore reject the applicant's submission that there was some sort of fraud.

I find that the tenancy entered into between LE and the respondents for a fixed term commencing on August 1, 2014 and ending on July 31, 2016 is a valid and binding tenancy agreement.

MM may have been a part owner of the unit but he did not exercise any of the requirements of being a landlord enumerated in the Act nor was he party to any of the tenancy agreement with the respondents. He had not entered any contractual relationship with the respondents. I therefore find that MM is not the lawful landlord of these respondents and accordingly he cannot issue a landlord Use Notice to End the Tenancy.

Alternatively the applicant issued a Notice pursuant to section 49(3) of the Act which provides that a landlord may give notice if he intends in good faith to occupy the rental unit. Section 49(2)(c) states if the tenancy agreement is a fixed term tenancy agreement it cannot be ended earlier than the date specified as the end of the tenancy.

Landlord's notice: landlord's use of property

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I found that the tenancy entered into between LE and the respondents for a fixed term commencing on August 1, 2014 and ending on July 31, 2016 was a valid and binding tenancy agreement. Accordingly even if the applicant can be considered a landlord, which I have specifically found he is not, MM cannot end this tenancy before the end of that fixed term or July 31, 2016.

For all of the above reasons I find that the Notice to End the Tenancy dated July 25, 2014 with an effective date of September 30 is invalid. I have dismissed the applicant's

claim for an Order for Possession and any claim for compensation in reliance upon the invalid notice.

Should the applicant interfere further with this tenancy, with the respondents or bring any further proceedings the respondents ought best join LE as a party to those proceedings in order that these matters be completely transparent at any future hearings.

Conclusion

I have dismissed all of the applicant's applications herein. The Notice to End the Tenancy dated July 25, 2014 is invalid. The tenancy is confirmed. There will not be any recovery of the filing fee.

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: October 15, 2014

Residential Tenancy Branch

