



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, OLC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord carries on business on November 21, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a tenant's Order for Possession?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

On December 12, 2002 the applicant signed a Rental Application with the previous owner applying to rent the rental unit. The rent was \$200 per month. The Rental Application form indicates that the applicant was the tenant and CA was an occupant. CA was the applicant's former partner. They subsequently married. The applicant testified that in 2003 CA moved into the rental unit with her.

CA subjected the applicant to physical and mental abuse. In April 2014 the applicant was forced to move out for fear of her safety.

CA has paid the rent for the rental unit commencing May 1, 2014.. The applicant has lives elsewhere. On October 24, 2014 CA gave the landlord \$2000 to be applied to the rent. The rent was in good standing at that time. The landlord told CA that he would be applying it to the rent on a monthly basis but it was not intended to turn this month to month tenancy into a fixed term tenancy.

The applicant is in the process of divorce proceedings and has hired a solicitor. However, CA is opposing every step that she is making.

The landlord takes the position that while his sympathies are with the applicant he does not wish to be caught in the middle of the marital dispute between the applicant and CA.

CA has not been served with the within application and it does not appear he is aware it is taking place.

Analysis

Policy Guideline #13 includes the following:

“Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.”

While I am sympathetic to the plight of the applicant I determined the applicant is not a tenant and I do not have jurisdiction to grant a tenant's Order for Possession. The applicant moved out of the rental unit on April 21, 2014 and removed all of her belongings on April 27, 2014. At that stage the previous tenancy agreement between the landlord and the tenant or the landlord and the two co-tenants came to an end. CA paid the rent commencing on May 1, 2014 and on subsequent months and the landlord accepted the payment. In doing so a new tenancy has come into existence between the landlord and CA.

To hold otherwise would leave the applicant in a very difficult position. If this is seen as an ongoing tenancy the applicant would be jointly and severally liable to the landlord along with CA for all damages to the rental property even if the damage was caused by CA.

Further, this dispute is between the applicant and her husband. The resolution of this dispute is in the hands of the court and not the Residential Tenancy Branch. An arbitrator has jurisdiction to consider disputes between landlords and tenants only. It would not be appropriate for an arbitrator to grant the applicant an Order for Possession effectively removing CA where he has not been given notice of the application and a chance to be heard.

Summary:

As a result I ordered that the application of the applicant be dismissed without liberty to re-apply.

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: December 19, 2014

Residential Tenancy Branch

