



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNDC, MNR, MNSD, ERP, RP, PSF, RPP, OPT, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent and damage or loss under the Act, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied to cancel a 10 day Notice ending tenancy for unpaid rent issued on October 14, 2014, compensation in the sum of \$10,000.00 for the cost of emergency repairs and damage or loss under the Act; an Order the landlord make emergency repairs and repairs, provide services or facilities required by law and that conditions or suspension of the landlord's right to enter the rental unit be Ordered.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant indicated several matters of dispute on his application. I determined that the main issue to deal with during this proceeding was the Notice ending tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. There was no evidence supplied indicating any emergency repair was completed by the tenant. Therefore, I dealt with the tenant's request to cancel the 10 day Notice ending tenancy for unpaid rent and dismissed the balance of the tenant's claim with liberty to re-apply.

At the start of the hearing the tenant requested the hearing be adjourned as a result of medical problems he has been experiencing. This request was denied. The tenant

applied for dispute resolution on October 20, 2014 and provided no evidence that he was barred from making his evidence submissions with his application; as is required by the Rules of Procedure. Further, this hearing dealt with only the Notice ending tenancy and it would be prejudicial to the landlord to adjourn.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The landlord stated that he is a tenant of the owner of the home. He has a signed tenancy agreement with the owner and does not act as agent for the owner.

The landlord (applicant) said that he rented out a room to the tenant as a way of supplementing his rent. Total rent owed is \$751.00; the tenant pays him \$400.00 each month.

The tenant (respondent) moved into the unit in July 2013. He has not signed a tenancy agreement. He said that at times he would pay rent directly to the owner of the home, or to the owner's son and that in some months he paid no rent, as he completed some work for the owner of the home. The tenant could not provide details of payments made.

The landlord confirmed that on occasion the tenant had made payment to the owner of the home.

The tenant said there has been a flood, causing damage to his personal property and that he has not been able to access the home. He only knows the 1st name of the property owner and his son; but did have an agreement that he could take over the tenancy of the home when the current tenant vacated.

Jurisdiction

I have considered the relationship between the individual who applied as landlord and the individual named as a tenant.

The Act defines a landlord as owner of the unit, the owner's agent or another person who, on behalf of the landlord, allows occupation of the rental unit. The landlord applicant confirmed that he was not acting as agent for the landlord; therefore, I find that the landlord applicant did not have the authority to issue the 10 day Notice to the tenant. The landlord applicant is not a landlord, but a tenant.

Residential Tenancy Branch policy defines an occupant as:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I find that this is what has occurred; the tenant moved into the rental unit, rented a room and, for the most part, paid rent to the actual tenant. The actual tenant supplemented his rent owed, by renting out the room.

Therefore, I find that the tenant applicant/respondent is an occupant and has no rights or obligations under the Act in relation to the landlord applicant.

Whether the tenant applicant has a relationship with the owner of the home has not been considered or decided.

Therefore, I find that the Notice ending tenancy for unpaid rent issued on October 14, 2014 cannot be enforced, as the Notice was issued in relation to a living arrangement that is not within the jurisdiction of the Act.

Conclusion

Jurisdiction is declined.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 02, 2014

Residential Tenancy Branch

