



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the applicant's request pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for Cause pursuant to section 55; and authorization to recover the filing fee for this application from the respondent pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The applicant testified that he served the respondent with his Application for Dispute Resolution package by registered mail on March 19, 2015. The respondent confirmed receipt of the package. The respondent also confirmed receipt of the 1 Month Notice to End Tenancy for Cause dated March 1, 2015.

The applicant submitted a computer memory stick that he testified contained information documenting the respondent's behaviour and interactions between the two of them. The respondent testified that he received the applicant's computer memory stick "a few days ago" but had not been able to access the material. The requirements for service of digital evidence within both the Residential Tenancy Policy Guideline No. 42 and Dispute Resolution Rules of Procedure Rule 3.10 include but are not limited to;

- to provide a to submit a table of contents
- to provide a statement for each digital file
- to ensure that all parties have 7 days of full access to the materials
- to ensure that all parties can access and view the materials

None of the requirements for submitting digital evidence had been met by the applicant and, therefore, the information provided by the applicant on the computer memory stick was excluded from the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The applicant testified that he and the respondent socialized with each other, spending time with friends together over some period of the tenancy. The applicant testified that, at a certain point in their time together, the respondent became difficult to live with, making inappropriate comments to guests and generally behaving in a disrespectful manner. The applicant states that, on one occasion the respondent paid him an outstanding amount of money by giving him a viola. The applicant sought an Order of Possession with respect to the respondent.

Both parties testified that;

- The applicant resides in the rental unit;
- The applicant rents the rental unit from a third party who is not the owner;
- The applicant has no interactions with the owner of the rental unit;
- Five residents live in the rental unit;
- The applicant accepts rent from all the residents and provides it to a third party;
- The applicant and respondent met on the internet as a result of the applicant's ad for a room in a five bedroom house;
- The respondent pays the applicant approximately \$500.00 each month;
- There is no written agreement between the applicant and respondent;
- There is no written agreement between the applicant and any other residents of the rental unit;
- The applicant has never dealt with the landlord by way of rental application, approval to reside in the rental unit or payment of rent;
- The applicant and 3 other residents are moving out of the rental unit.

Analysis

For a matter to be considered under the *Residential Tenancy Act*, both parties to the application must have a role that fits within the scope of the *Act*. To consider a matter under the *Act*, a tenancy must be formed with both a tenant and a landlord. Under the *Residential Tenancy Act* definitions section (section 1), a landlord is defined;

"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 owner, ...

(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 respondent, when the context requires this;

The applicant in this matter does not own the rental unit or act on the behalf of the owner. The applicant has no formal relationship with the owner, based on his testimony. Contrary to the wording of section 1(c), the applicant in this matter is a tenant occupying the rental unit and therefore he is excluded from being considered a landlord under subsection 1(c) or any of the other categories that define a landlord under the *Act*.

Both parties testified that the respondent placed an advertisement online to rent a room. The applicant responded to that advertisement and soon became one of five other occupants to this residence including the applicant. The applicant testified that he had signed a lease with the “landlord” of the property and only he was named on that lease. The “landlord” had not formally approved the other occupants/residents, according to the applicant. The applicant testified that he gathered up money from each of the occupants/residents each month and provided it to the “landlord”.

Residential Tenancy Policy Guideline No.19 addresses alternative agreements, including assigning and subletting. The applicant submitted that he may be considered a sub-landlord. The Policy Guideline states,

A sublease is a lease given by the applicant... of residential premises to a third person (the sub-tenant or sub-lessee). ... The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the sub-landlord of the sub-tenant.

The policy with respect to a sublease is that the sub-landlord (the original tenant) retains their obligations with respect to the tenancy. The policy further states;

A tenant may assign or sublet his or her interest in a tenancy agreement or lease with the consent of the landlord. ... the proposed new tenant is not a party to the tenancy agreement until such time as the respondent has agreed to assignment or sublet, and the formal transfer is made.

The applicant testified that he believed the landlord was aware that he was renting out other rooms in the rental unit but he testified that, at no point did he seek the consent of the landlord in screening any additional residents. The applicant had prepared no written documents with respect to the living arrangement with the respondent or any other residents.

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. As with all tenancy matters, this agreement *should* be in writing and should address the use of the unit itself as well as common areas, services and facilities. The applicant testified that there was an oral agreement that the respondent pay \$500.00 on or about the first of each month. The applicant and respondent did not agree on other details of the rental agreement, including responsibilities for care of the residence and freedom to bring guests. While there may have been some informal and changeable understanding between the applicant and respondent, there was no written agreement between parties to suggest that there was an intention to create a tenancy.

The applicant testified that he and the respondent socialized initially but that their relationship became increasingly strained. He applied for an Order of Possession based on his understanding that he was the respondent's landlord.

I find that the applicant and respondent were roommates, perhaps co-tenants. However, based on the applicant's description of the rental arrangement with the respondent, I find that this arrangement was neither a tenancy nor a sublet and therefore the arrangement is not governed by the *Residential Tenancy*. As a result, I find that I do not have jurisdiction in this matter, and the application is effectively 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: April 29, 2015

Residential Tenancy Branch

