



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, MNSD, FF
MT, CNR, MNDC, OLC, ERP, LRE, FF

Introduction and Preliminary Matters

This hearing convened as a result of cross applications. In the “Landlord’s Application for Dispute Resolution” filed by L.B., she requested an Order of Possession based on unpaid rent, a Monetary Order for damage to the rental unit and unpaid rent and to recover the filing fee.

In the “Tenant’s Application for Dispute Resolution” filed by C.W. and J.R., they sought more time to dispute a Notice to End Tenancy for Unpaid Rent or Utilities issued May 5, 2015 (the “Notice”); an Order cancelling the Notice; an Order of Possession; an Order that the Landlord make emergency repairs; an Order restricting the Landlord’s right to enter the rental unit; and to recover the filing fee.

L.B., the Landlord named on the Landlord’s application, who also identified herself as the property owner appeared at the hearing on her own behalf. C.W. also appeared and was assisted by an advocate, E.N. J.R. did not attend the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The advocate advised that J.R. was incarcerated at the time of the hearing. L.B. testified that J.R. was incarcerated as a result of an altercation between J.R. and C.W. and that although they might have been in a relationship prior to the altercation, they are no longer. No evidence was introduced which would suggest J.R. was served with Notice of L.B.’s application. Accordingly, L.B.’s application for Orders with respect to J.R. are dismissed with leave to reapply.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Based on the information provided at the hearing, I am not satisfied that C.W. or E.N. have authority to act on J.R.'s behalf, accordingly, and as he was not present at the hearing, I decline to deal with any relief sought on his behalf. I exercise my discretion to dismiss J.R.'s claims and I grant him leave to re-apply. I make no finding as to whether a tenancy exists between J.R. and L.B.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the continuation of this tenancy is not sufficiently related to L.B.'s claim for a monetary Order. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. Accordingly, I exercise my discretion to dismiss L.B.'s claim for monetary relief and I grant her leave to reapply.

As I informed the parties during the hearing, C.W.'s claims can only be considered if a tenancy exists between her and L.B., failing which I lack jurisdiction. Should such a tenancy exist, I grant her leave to reapply for the balance of relief sought in her application.

As a result of the foregoing, I have determined the following issues to be decided.

Issues to be Decided

1. Is there a tenancy between C.W. and L.B.?
2. In the event C.W. is a tenant, should she be granted more time pursuant to section 66(1) of the Act to make her application to cancel the Notice?
3. In the event C.W. is a tenant, should the Notice be cancelled?
4. In the event C.W. is a tenant, is L.B. entitled to an Order of Possession?

Background and Evidence

The subject property is a manufactured home owned by L.B.

E.N. testified that J.R. entered into a verbal tenancy agreement with R.P., who purported to act on L.B.'s behalf. The terms of the agreement were that J.R. was permitted to reside in the manufactured home while he fixed the home for resale. Monthly rent was set at \$1,050.00 payable on the first of the month. J.R. was not required to provide a security deposit because E.N. says he was credited this amount for cleaning up the manufactured home. E.N. stated that R.P. provided J.R. with keys to the manufactured home.

E.N. stated that J.R. paid half a month's rent in March 2015, and a full month's rent for April 2015. No evidence of such payments was provided. E.N. confirmed that no rent was paid for May or June 2015 and he stated that C.W. attempted to pay the rent for May and June, but L.B. refused to accept the funds. Again, no evidence of such attempted payments was provided.

When I asked E.N. for proof that C.W. was a tenant, he stated that she was in a relationship with J.R. and accordingly submitted that she was a tenant.

E.N. confirmed that C.W. was served with the Notice on May 5, 2015. The Notice was signed by L.B. and R.P. C.W.'s original application was made on May 13, 2015, and amended on May 15, 2015. When I asked E.N. why C.W. did not apply within five days as required by section 46, E.N. initially responded that he had no information; he then stated that "she had to drive" following which he stated that L.B. changed the locks. When I asked E.N. when the locks were allegedly changed, he stated that he did not know.

C.W. also testified on her own behalf.

When I asked C.W. if she was part of any discussions with J.R. and R.P. she stated that she was not in town but that J.R. took photos of the manufactured home and sent them to her. She stated that she had the photos, but was not able to submit them as she was too late.

When I asked her if utilities were included in the alleged verbal tenancy agreement, C.W. stated that the utilities were in J.R.'s name. Again she stated that she was too late to submit evidence of these utilities in time for the hearing.

When I asked C.W. whether she paid any rent, she stated that she provided \$300.00 to J.R. who then paid the \$1,050.00. She could not provide a date that the \$300.00 payment was made. She stated that she also paid rent in April of 2015, but could not advise what amount she paid in April or when she made such a payment.

C.W. testified that she and J.R. signed a tenancy agreement with the owner of the manufactured home park in which the manufactured home was located. Again, no evidence of this agreement was provided.

C.W. testified that she failed to make her application within the five days as L.B. had changed the locks on the manufactured home, making it impossible for C.W. to leave the home and attend to filing. As with E.N., C.W. was not able to provide a date as to when the locks were changed.

C.W. testified that she did not pay rent for May 2015 as she was told by L.B. and R.P. that they did not want her living in the manufactured home. She further testified that she tried to pay rent for June 2015, and that she “texted them as to where they wanted to meet, and they didn’t respond”. C.W. failed to submit proof of this alleged text, or any other evidence which might support her claim that she attempted to pay rent.

L.B. testified on her own behalf. She testified that R.P. entered into an agreement with J.R. to fix up her manufactured home for sale. She denied that any tenancy was created but conceded that J.R. was permitted to be at the manufactured home while he was fixing it up.

L.B. further testified that she did not know C.W., had never met her, and did not consent to her living in the manufactured home. L.B. stated that C.W. “had J.R. arrested” and when L.B. was notified that J.R. was no longer fixing up the manufactured home and was incarcerated (approximately a month after entering into the agreement with R.P.), that she discovered that C.W. was living in the home. She stated that she never received any rent from either C.W. or J.R.

L.B. testified that when she discovered C.W. was living in the manufactured home she called the police. When the police arrived they instructed her to issue a 10 Day Notice. L.B. stated that she is not a landlord, as no tenancy exists, but she issued the Notice as directed by the police.

L.B. confirmed that she entered the manufactured home through the window and that she had changed the locks.

Analysis

In order for C.W. to succeed her application, she must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that C.W. and L.B. entered into a tenancy and that they had a landlord and tenant relationship.

The three basic tenets used to determine if a contract has been entered into include: capacity, consensus and consideration. In this case there was no evidence or testimony presented questioning the other party's capacity; as such I make no findings on capacity.

L.B. testified that R.P. entered into an arrangement with J.R., but denied it created a tenancy. As J.R. and R.P. were not at the hearing, and I have found insufficient evidence to support a finding as to whether C.W. and E.N. were authorized to act on J.R.'s behalf, I make no finding as to whether a tenancy exists between C.W. and J.R.

I accept L.B.'s evidence that she did not enter into an agreement with C.W. C.W. confirmed she was not part of any discussions between J.R. and R.P., and therefore could not provide details as to the nature of their agreement. She also failed to introduce any evidence which would support her claim that she had a verbal tenancy agreement with C.W. or the consent of C.W. as the Landlord to reside in the manufactured home. At best C.W. is an occupant without the rights and responsibilities of a Tenant.

Additionally, C.W. failed to submit any evidence which would support a finding that there was any financial consideration, or rent paid by C.W. to L.B.

Residential Tenancy Policy Guideline 27 states that the Residential Tenancy Branch does not have the authority to hear all disputes regarding every type of relationship between two or more parties. The jurisdiction conferred by the Legislation is over landlords, tenants and strata corporations.

In consideration of the foregoing and on a balance of probabilities, I find that no tenancy exists between C.W. and L.B. Accordingly, I decline jurisdiction to deal with the issues between C.W. and L.B.

Conclusion

As I have found that no tenancy exists between C.W. and L.B., I decline jurisdiction to deal with the claims advanced by each of them against the other.

I am not satisfied that C.W. or E.N. had authority to act on J.R.'s behalf. Should J.R. wish to advance a claim against L.B., he is at liberty to apply on his own behalf.

I dismiss L.B.'s claims against J.R. as I find insufficient evidence that he was served L.B.'s application. L.B. is at liberty to reapply but must ensure J.R. is served in accordance with the *Act*.

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 03, 2015

Residential Tenancy Branch

