



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB OFF – T.M.'s application
 CNL – T.C.'s application

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution.

T.M. filed his application on March 24, 2016 naming two respondents, J.G. and T.C. J.G. was a person listed as a Tenant on a written tenancy agreement that listed T.M. as the Landlord. J.G. was not in attendance at this hearing. T.C. is currently occupying the rental unit and was in attendance at this hearing. T.M. filed his application seeking an Order of Possession, other reasons, and to recover the cost of his filing fee.

T.C. filed his application on March 09, 2016 listing T.M. as the respondent. T.C. filed seeking an Order to cancel a Notice to end tenancy for landlord's use of the property.

Residential Tenancy Branch Rule of Procedure 7.20 stipulates the arbitrator may exclude witnesses from the dispute resolution hearing until called to give evidence. The arbitrator may, when they consider it appropriate to do so, exclude any other person from the dispute resolution hearing.

The hearing was conducted via teleconference and was attended by T.M., T.C. and three witnesses who attended on behalf of the T.M. The witnesses were calling into the teleconference well after the start time of the hearing causing disruptions to the hearing process. I checked each witness in, informed them that if I decided to hear their submissions I would call them back into the proceeding, and then I instructed them to disconnect from the hearing. At 9:13 a.m. I locked the conference to prevent any further disruptions to the hearing.

I explained to T.M. and T.C. how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person confirmed receipt of the application for Dispute Resolution and documentary evidence from each other. No issues regarding service or receipt were raised. As such, I accepted the relevant submissions from both T.M. and T.C.

Upon review of the applications before me, I informed both parties that I would determine T.C.'s position in relation to his occupation of the rental unit. I would not be hearing evidence relating to specific events between the parties and would not be hearing evidence from the Landlords' witnesses in this hearing as they related to other issues. If T.C.'s position was determined to be a tenant covered by the *Residential Tenancy Act*, each party would have liberty to file another application to seek a remedy for any unresolved issues.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is T.C. occupying the rental unit as a tenant or an Occupant?
2. Has T.M. proven entitlement to vacant possession of the rental unit?

Background and Evidence

T.M. submitted evidence he entered into a written tenancy agreement with J.G. and his co-tenant J.D. for a tenancy which began on October 31, 2013. Rent of \$750.00 was payable on or before the first of each month.

T.M. testified that in approximately March 2014 J.G. informed him that J.D. had moved out. T.M. submitted that as of December 2, 2015 J.G. was almost three months behind on his rent. At that time J.G. had asked permission to have a roommate to assist in paying his rent. T.M. asserted he gave J.G. verbal permission to have a roommate; however, at no time did he agree to allow the roommate to become a tenant. T.M. stated that he informed J.G. that the roommate could only stay for 3 months. No written agreements were entered into regarding the addition of a roommate.

T.M. stated he had made arrangements to meet J.G. at the rental unit on March 2, 2016 to pick up the rent. He said when he arrived T.C. was at the rental unit and not J.G. T.M. asserted it was around that time that he found out T.C. had kicked J.G. out of the rental unit and T.C. had changed the locks.

T.M. testified he received payment of \$790.00 from T.C. on March 2, 2016, \$40.00 of which he returned to T.C. He said he asked T.C. for references at that time and told him that he would not agree to allow T.C. to be a tenant until he checked out the references. T.M. stated he called T.C. on March 6, 2016 and informed him that he would not be taking T.C. on as a tenant after hearing back from his references.

T.M. stated he issued T.C. receipts for "use and occupancy only" for the payments received for March 2016 and April 2016.

T.C. testified he had been occupying the rental unit since October 2015. He asserted he did not know what “use and occupancy only” meant and had never heard the term before receiving the receipts on April 7, 2016. T.C. argued that based on the information he obtained from the RTB Fact Sheets and website he was considered a tenant because he had paid T.M. rent.

T.C. submitted he had not entered into any written agreement, tenancy or otherwise, with T.M. T.C. confirmed he had met with T.M. on March 2, 2016 and they discussed whether T.M. would take him on as a tenant. T.C. stated he was requested to provide references and thought he would be a tenant after that. T.C. argued that T.M. called him the next day and told him he had to move out. T.C. asserted he was of the opinion he did not have to move out because he was never issued a Notice to end tenancy.

T.M. submitted evidence that he met with his Tenant, J.G., on March 2, 2016 after he had attended the rental unit and received the payment from T.C. He said it was during that meeting that J.G. gave him written notice to end the tenancy. Than after that he filed his application for Dispute Resolution to regain vacant possession of his rental unit. He asserted he receipt the payment for April 2016 from T.C. for use and occupancy only.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement, oral or written, between a landlord and tenant respecting possession of a rental unit and use of common areas. In order to make a determination on this application I must first be satisfied that the parties named in this dispute meet the definition of landlord and tenant.

A written tenancy agreement may be amended to change or remove a term, other than a standard term, only if both the landlord and tenant agree to the amendment in writing, pursuant to section 14(2) of the *Act*.

An occupant is defined in Residential Tenancy Policy Guideline 13 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 original tenancy agreement, unless all parties (owner/agent/landlord(s), tenant(s), and occupant) agree to enter into a written tenancy agreement to include the new occupant(s) as a tenant.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Based upon the aforementioned and pursuant to section 62(2) of the Act, I find T.C. does not meet the definition of a tenant; rather I find he is an Occupant. I make this finding in part because the Tenant J.G., who is listed as a tenant on the written tenancy agreement was the person who allowed T.C. to occupy the rental unit as a roommate.

In addition, the undisputed evidence was T.C. did not enter into a written agreement with T.M. Nor was the tenancy agreement between T.M. and J.G. amended to add T.C. as a tenant.

Notwithstanding T.C.'s argument that he gave T.M. \$790.00 on March 2, 2016 or his argument that his payment made him a tenant because he called the payment rent; I find T.C. was clearly aware that he was not yet accepted as a tenant. I make that finding based on the undisputed evidence that T.C. was required to provide T.M. with references on March 2, 2016 and the next day or a few days later T.M. called T.C. and told him he would not be accepted as a tenant due to his reference responses. T.C. confirmed he was told he had to move out by March 31, 2016.

T.C. has continued to occupy the rental unit pending the outcome of his application for Dispute Resolution which was filed on March 9, 2016. That application was not scheduled to be heard until April 21, 2016; therefore, T.M. was entitled to collect payment for use and occupancy of the rental unit for April 2016 and until such time as a Decision has been issued to determine these matters.

After consideration of the totality of the evidence before me I find there is not and never was a tenancy agreement, verbal or written, in place between T.M. and T.C. to which the *Residential Tenancy Act* applies. Accordingly, T.M.'s and T.C.'s applications cannot proceed against each other for want of jurisdiction as they do not have a landlord/tenant relationship.

In addition to the above, I find T.M.'s application may proceed against the respondent Tenant, J.G., who was properly named in the written tenancy agreement as a Tenant. I accept the undisputed evidence that J.G. gave written notice to end his tenancy. Accordingly, I grant T.M.'s request for an Order of Vacant Possession to the rental unit effective April 30, 2016 at 1:00 p.m. The style of cause has been amended to include only J.G., pursuant to section 64(3)(c) of the Act. The Order of Possession was issued effective April 30, 2016 because T.M. has accepted payment of \$750.00 for use and occupancy for the entire month of April 2016.

Given the circumstances of these matters, and in absence of J.G. at the hearing, I declined to award recovery of T.M.'s filing fee.

Conclusion

T.C. was found to be an Occupant, not a Tenant, and the style of cause on the Order of Possession was amended to remove his name. T.M. was successful with his application against J.G. for an Order of Possession effective April 30, 2016 at 1:00 p.m.

This decision is final, legally binding, 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: April 22, 2016

Residential Tenancy Branch