



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, OPT, LRE

Introduction and Preliminary Matter

This hearing convened as a result of an Application for Dispute Resolution wherein the Applicants sought an Order of Possession pursuant to section 54 of the *Residential Tenancy Act* (hereinafter referred to as the “*Act*”), an Order that the “Landlord” comply with the *Act*, the Regulations or the tenancy agreement, and an Order restricting the Landlords’ right to enter the rental unit

Only the Applicants called into the hearing at the scheduled time. M.M., testified he personally served the Respondent C.S. with the Notice of Hearing and their Application on May 24, 2016. He further testified that J.B., witnessed him serve C.S. Approximately 27 minutes after the hearing commenced, the Respondent, C.S., called into the hearing. He stated he was simply “tardy”.

Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Preliminary Issue to be Decided

1. Does the *Residential Tenancy Act* apply to this dispute?

Background and Evidence

The Applicants testified as follows.

M.M. testified that the house was formally owned by J.B. He stated that the house went into foreclosure and the Respondent, C.S., purchased the home on December 15, 2015. M.M. testified that he and J.B. entered into a tenancy agreement with C.S. to allow them to remain in the home for a period of three months. A copy of the tenancy

agreement was introduced in evidence and confirmed that the tenancy was to end on March 31, 2016.

M.M. testified that in March C.S. moved into the upstairs multi-purpose room, which was formerly used as a dance studio. M.M. then stated that they did not agree to C.S. moving into the rental home at that time.

J.B. also testified. She stated that she owned the home for 34 years. She stated that it went into foreclosure and was purchased by C.S. She confirmed that she entered into a tenancy agreement with the Landlord (which was introduced in evidence) for a three month term set to end at the end of March 2016. J.B. testified that she entered into another tenancy agreement with the Landlord for another three month term which was set to end June 30, 2016. This second agreement was not introduced in evidence.

J.B. confirmed that on May 23, 2016 C.S. "evicted them". Introduced in evidence was a letter dated May 23, 2016 wherein C.S. wrote that as the parties share a kitchen and bathroom, the *Residential Tenancy Act* does not apply. He also instructed them to leave as they had not paid rent for April 2016.

J.B. confirmed that the last time she was in the rental home was the morning of May 25, 2016. She confirmed that she did not move her items as of that date, but she has since moved all of her items out on May 29, 2016.

J.B. confirmed that she did not want an Order of Possession, or an Order that the Landlord be restricted from entering the rental unit as she and M.M. had vacated the home. She further stated that she did not claim this relief and simply wanted a monetary Order for 1/3 of her rent back for C.S. using her utensils while they lived together in the rental home.

M.M. confirmed that both he and J.B. completed the Application for Dispute Resolution together.

C.S. testified that he purchased the property on December 31, 2015. He confirmed that he gave M.M. and J.B. a fixed term tenancy until the end of March 31, 2016. He stated that on March 2, 2016 he gave them notice to end the tenancy as per the agreement and he also informed them that he would be moving into the home at the end of March 2016. He confirmed that he moved into the rental unit on March 29 or 30, 2016. He further stated that J.B. agreed that he could move in earlier than March 31, 2016.

C.S. confirmed that the second tenancy agreement was entered into from March to the end of June 2016 with him living with M.M. and J.B. on a “trial basis”. As noted, this agreement was not provided in evidence by either party.

C.S. confirmed that the rent payable from December to March 2016 was \$1,400.00 per month, as well as after he moved in and shared the house with M.M. and J.B. He also stated that when M.M. and J.B. failed to pay the full amount in April he informed them they needed to move out. He finally testified that all their belongings had been moved out.

Analysis

Section 4 of the *Residential Tenancy Act* provides in part as follows:

What this Act does not apply to

4 This Act does not apply to

...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

...

The parties agree that as of March 30, 2016, the owner of the rental home, C.S., resided in the rental unit with the applicants, M.M. and J.B.

M.M. and J.B. argue that C.S. moved in without their consent. C.S. testified that he informed M.M. and J.B. that he would be moving in once the initial fixed term tenancy came to an end on March 31, 2016.

Neither party submitted a copy of the residential tenancy agreement which applied during the time period March 31, 2016 to June 30, 2016.

Based on the evidence before me, I am unable to find that a tenancy existed after March 31, 2016. It is notable that the M.M. and J.B. did not apply for dispute resolution until May 20, 2016. Presumably, had the M.M. and J.B. not been agreeable to C.S. moving into the rental home in late March of 2016, they would have made an application immediately after C.S. moved in. In all the circumstances, I find it more likely than not that they agreed he could move in at that time.

As M.M. and J.B. shared a bathroom and kitchen with C.S. after March 31, 2016, section 4(c) provides that the *Residential Tenancy Act* does not apply to this dispute. Accordingly, I must decline jurisdiction.

Conclusion

The parties shared a bathroom and kitchen during the time period when the dispute arose. Accordingly, pursuant to section 4(c) of the *Residential Tenancy Act*, I decline jurisdiction to deal with their dispute.

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: June 10, 2016

Residential Tenancy Branch