



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, OPT, CNC, AAT

This hearing dealt with an Application for Dispute Resolution by the applicant to allow a tenant more time to make an application to cancel a notice to end tenancy, to cancel a notice to end tenancy for cause, to allow access to(or from) the unit and for an order of an order of possession.

Both parties appeared.

Preliminary and Procedural matters

The first issue I must determine is whether the Act has jurisdiction of this matter.

At the outset of the hearing the respondents indicated that the applicant is not a tenant under the tenancy agreement. The respondents stated that the tenant named in the tenancy was AH and they entered into a tenancy agreement in September 2012. The respondents stated that from time to time AH was given permission to have roommates to help pay the rent.

The respondents indicated that on June 24, 2016, the tenant AH, gave notice to end the tenancy effective July 31, 2016.

The applicant LS stated that they were not added to the tenancy agreement as a co-tenant; however, they should have been. The applicant stated that they were told by their advocate that they should withhold rent for August 2016.

Under section 14(2) of the Act,

“a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.”

[Reproduced as written]

An occupant is defined in the *Residential Tenancy Policy Guideline*, section 13 as follows:

“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, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant”

[Reproduced as written]

In this case, the tenant AH entered into a tenancy agreement with the landlord in 2012. AH had several roommates over the course of their tenancy to help pay rent. The tenancy agreement was not amended to add LS as a co-tenant. Although I accept LS has resided in the rental unit since June 2015, and help pay rent. Therefore, I find the applicant is not a tenant under the Act. I find the applicant is an occupant and has no rights or obligations under the Act.

Further, even if I accept that the applicant was a co-tenant, which I do not, the tenant AH, ended the tenancy effective July 31, 2016.

The Residential Tenancy Policy Guideline #13, states;

“Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, **and all tenants must move out, even where the notice has not been signed by all tenants.** If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.”

[Reproduced as written]
[My emphasis added]

In this case, the tenant AH gave written notice to end the tenancy on the effective date of July 31, 2016. All tenants and occupants were required to move out whether or not they signed the notice, on the effective date of the notice. The occupant LS did not vacate as required.

The occupant LS has not paid any rent for August 2016 and therefore has not created a new tenancy agreement. As a result, I find the Act has no jurisdiction over the matter as the applicant LS, is an occupant as defined and has no legal rights or obligations under the Act. Therefore, I decline to hear the matter due to lack of jurisdiction.

Further, I **caution the advocate** for the applicant, that if they are informing their clients not to pay rent, as this was not denied in the hearing, the advocate may be jeopardizing their client's tenancy. The advocate has no authority under the Act to give tenants permission to withhold rent.

Conclusion

The applicant is not a tenant under the Act, and has no legal rights or obligations under the Act. I decline to hear the matter due to lack of jurisdiction

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: August 12, 2016

Residential Tenancy Branch

