



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes: CNR, OLC

Introduction:

This was an application to cancel a Notice to End the Tenancy for Non-Payment of Rent dated July 28, 2016. Both the applicant and respondent attended the hearing.

Issues:

Is the Notice valid?

Is the landlord entitled to an Order for Possession?

Background and Evidence:

I find that the Notice to End a Residential Tenancy was served in person on the applicant on June 21, 2016. The respondent admitted service of the Application for Arbitration/Notice of Hearing.

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent.

The respondent/landlord JH and her daughter SH also an owner of the property, testified that the house in which the applicant resides is a shared accommodation in which he was the tenant and was responsible to pay rent in the amount of \$ 1,680.00 plus pay for all utilities directly. He was permitted to obtain as many roommates as possible but was required to remit the stated amount of rent each month. He was also responsible to notify the landlord of the need to do any repairs. JH thought there were a written agreement but could not find it. JH testified that she held a security deposit from the applicant. JH testified that the applicant failed to pay the complete rent in full and in fact to date was arrears in the rent by over \$ 4,170.00. JH produced an accounting for the unpaid rent which indicated that for almost every month from January 2015 onward, the applicant was in arrears. The applicant had collected and held security deposits for all the other occupants. The respondent testified that she notified the applicant on July 1, 2016 that he was no longer to collect rents and was to vacate the unit immediately.

The respondent testified that she began dealing directly with the other occupants and planned to enter into tenancy agreements with each of them. The applicant refused to vacate and therefore the respondent issued this Notice to End the Tenancy. The applicant failed to pay any rent after July. The respondent asked for an Order for Possession as soon as possible.

The applicant testified that he was a tenant/roommate of a former tenant named M. commencing in 2014. He paid M. a security deposit and his rent on a regular basis. One day M. departed and the respondent asked the applicant to take over managing the building in exchange for rent. He was obliged find tenants, collect their rent, make minor repairs and pay all utilities. He testified that he only agreed to remit what the net rents were after paying all expenses and never agreed that he was personally responsible for a fixed amount of rent. He denied signing a tenancy agreement with the respondent although he had one with M. He claimed he was not a tenant but the agent or employee of the landlord. He admitted that JH held his security deposit.

On or about June 28, 2016 the applicant testified that the respondent notified him that she did not wish him to collect rent any more and that he was to move out as soon as possible. The applicant admitted to collecting and holding security deposits from the other occupants in his bank account. The applicant claims he does not owe any rent as he never was responsible for paying his own rent and was not a tenant. He requested that I cancel the Notice to End the Tenancy.

Analysis:

There was conflicting evidence as to whether there was a tenancy, what the agreed amount of rent was and ultimately whether the applicant was responsible to pay any rent or merely collect rent from other occupants in the unit as an employee or agent.

It is clear, that all parties admit that before July 2016, all the other occupants in the building did not have a landlord or tenant relationship with the respondent as they only dealt with the applicant and paid rent directly to him. It was the applicant who was responsible for paying the rent to the respondent and all the utilities were in his name. The applicant alleged and therefore has the burden to prove that he was the agent or employee of the landlord. If the applicant was an employee of the respondent as he alleges, one would expect that the utilities would be in the respondent's name, he would have remitted the security deposits to the respondent, and that the other occupants would be paying rent either directly to the respondent or by cheque payable to the respondent. However the parties all agree that the applicant transferred all sums to the respondent electronically every month, that the utilities were in his name and that the applicant retained all the other occupants' security deposits in his bank account.

It was the applicant's submission that he was only to pay whatever money he received from the other occupants less the utilities. However, from the continuing correspondence submitted as evidence by the respondent, that was clearly not

acceptable or agreed to by JH, as she kept insisting on payment of the full amount of rent. Nowhere in that correspondence does the respondent ever acknowledge that there was anything other than a landlord and tenant relationship between the parties. In support of the JH's submission that the applicant was a mere tenant and not employee or agent I note that in an email dated February 4, 2016 the respondent states:

Is it possible for you to pay the rent on the first of every month from your wages and recoup from your tenants? You have not paid the full amount for so long there is a problem.

Accordingly, I find it unlikely that the applicant was an agent or employee of the landlord in absence of any written agreement to that affect. I find all the usual indicia of a tenancy were present: amount of rent, who was the tenant, what was being rented, and how the rent was payable. I find that the applicant was a tenant, who was responsible to pay the sum of \$ 1,680.00 every month. I find that the other occupants of the building were not tenants but roommates of the applicant. I further find that the applicant had not paid the rent in full and by his own admission had not paid any rent for August or September 2016.

The applicant had disputed this Notice but failed to demonstrate that he was an agent or employee of the respondent thereby excusing his failure to pay the rent. I have dismissed the applicant's application. I find the Notice is valid and I uphold it.

Pursuant to section 55(1) of the Act I have granted the landlord an Order for Possession effective 2 days after service on the tenant.

Conclusion:

I have dismissed the tenant's application. I granted the landlord an Order for Possession. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: September 20, 2016

Residential Tenancy Branch

