



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties appeared and gave affirmed testimony.

Neither party had filed any written evidence in advance of the hearing but both testified that they had completed an Intent to Rent Form and the landlord had served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant said he had copies of both documents. I gave the landlord leave to file these two documents after the hearing, which she did.

Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction over this dispute?
- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

The rental unit is a cabin located on a blueberry farm. The landlord is the daughter-in-law of the registered owner of the farm. She testified that they pay all the expenses associated with the farm – mortgage payments, property taxes, utilities and all farm expenses. The farm is leased out. Any shortfall between the income generated by the property and the expenses are paid by her. So far there has been no profit to split. She testified that the farm will be transferred to her and her husband upon her father-in-law's death.

The landlord testified that in march her uncle asked her to rent the unit to the tenant. Her uncle knew the tenant so she agreed. She gave her uncle the keys, who gave them to the tenant.

The tenant testified that he gave the uncle \$100.00 to hold the unit. He and the uncle agreed that he would rent the unit for a monthly rent of \$400.00. The uncle owns a

trucking company and he said he works for the uncle as a casual labourer. Their agreement was that the tenant's earning would be applied to the rent. The tenant thinks he moved in at the beginning of April.

The landlord testified that in April she spoke to her uncle about the rent and he told her the tenant was on welfare and that welfare would pay the rent. She told her uncle that the tenant had to file an application for the Ministry. The landlord testified that her uncle did not say anything about a work-for-rent arrangement between he and the tenant.

Both parties testified that the tenant brought the landlord a Shelter Information Form, which the landlord completed and they both signed. The form is dated May 6, 2016. The name of the registered owner is a third party, presumably the father-in-law. The landlord signed as the property manager or agent of the registered owner. The rent is stated to be \$500.00 per month and the security deposit is \$250.00.

The tenant testified that the uncle brought the form to him. The uncle has trouble with forms so he took the form to the landlord. The tenant acknowledged that on the form the landlord, not her uncle, is stated to be the landlord.

The landlord testified that in May she got a call from the Ministry and the subsequently sent the \$250.00 security deposit directly to her.

The landlord testified that she did not receive any payment from the tenant or the Ministry for May or June. She called the Ministry many time but they would not return her calls. She also spoke to the tenant who kept promising her payment.

The tenant that it took some time but eventually the Ministry did pay the shelter allowance directly to him. More recently, the Ministry has cut off payments of the shelter portion and has only been paying him the living allowance.

The tenant testified that after the initial deposit of \$100.00 he never made any other payment to the uncle. He said he has never received an accounting from the uncle for the work he has done. The tenant said he suffered a stroke about six weeks ago and has not worked for the uncle since.

The tenant says that the landlord never asked him for payment; in fact, she refuses to talk to him. The landlord says that she did ask the tenant for rent and he never once mentioned any arrangement with her uncle. She also said that when she asked her uncle about the rent he told her that welfare would pay it. The tenant testified that he had had a conversation with the uncle in the past two weeks and he told him that he

had paid the rent to the landlord and that the rent was paid to date. The landlord testified that she has not received any money from her uncle.

On June 25, 2016 the landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent. The notice claims arrears of rent in the amount of \$1500.00. She testified that she posted the notice on the door of the rental unit in the company of another uncle.

The tenant testified that the landlord and a gentleman he did not know came into the rental unit with notice or permission and left the notice inside the unit. He was so upset by the entry that he contacted the police. He testified that he did not take the notice seriously so did not file an application disputing it.

Analysis

Does the Residential Tenancy Branch have jurisdiction over this dispute?

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only hear and resolve disputes that are within the jurisdiction created by the statute.

Section 2 of the *Act* states that the Act applies to tenancy agreements. It defines “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy.

The definition of a “landlord” in the *Residential Tenancy Act* includes a person who:

- is entitled to possession of the rental unit; and,
- exercises any of the rights of a landlord under a tenancy agreement or the Act in relation to the rental unit;

and, is not a tenant occupying the rental unit. Tenant is only defined as including the estate of a deceased tenant and, where the context requires, a former or prospective tenant.

I find that the landlord is licensee of her father-in-law; not a tenant. Some of the factors that lead me to this conclusion are the close family relationship and the fact that the landlord pays all the expenses associated with the property, not a fixed amount for rent.

As the landlord is not a tenant herself, she fits within the definition of “landlord” and the Residential Tenancy Branch has jurisdiction over this dispute.

Is the landlord entitled to an order of possession and, if so, on what terms?

Whatever the original conversations between the tenant and the landlord's uncle the terms of the oral tenancy agreement, as reflected in the Intent to Rent form signed by both parties, and confirmed in the oral testimony of the parties were that it was a month-to-month tenancy commencing April 2, 2016; the monthly rent was \$500.00 to be paid on or before the first day of the month; and the tenant was to pay a security deposit of \$250.00.

Section 46 provides that a tenant who has been served with a 10 Day Notice to End Tenancy may dispute the notice by filing an application for dispute resolution within five days of receipt. One of the principal reasons for disputing a notice is that the rent has been paid. The section provides that a tenant who does not pay the arrears of rent or file an application for dispute resolution within five days is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the unit by the date stated on the notice. This information is clearly laid out on the notice to end tenancy.

The tenant knows that as a tenant he has certain statutory rights and protections. He took action when he felt that his privacy rights had been invaded but, for whatever reason, chose to nothing about a claim for arrears of rent which he now says were not owed.

By not disputing the notice within the required time the tenant is deemed to have admitted the facts set out on the notice and the arbitrator is bound by that admission.

Even if the tenant had filed an application for dispute resolution I would not have accepted his evidence that his rent was to be paid, or had been paid, from wages due to him by the landlord's uncle for the following reasons:

- If his rent was to be set off against his ages why did he apply for and accept the housing allowance from the Ministry?
- The landlord was clearly taken aback in the hearing by the tenant's contention. Why did the tenant not raise this assertion with her earlier? Particularly after he had been served with an eviction notice based upon unpaid rent.
- Not only did he not provide an accounting for the work done for the uncle and the wages due to him there was no evidence that he taken any steps to obtain one.
- Although he knew the issue was going to be whether there was rent due he did not arrange to have the uncle testify at the hearing or get a written statement from the uncle to back up his claim that the uncle had paid the rent in full to the landlord.

I find that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent in the prescribed form; he did not file an application to dispute the notice within the required time; and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the order.

Based on the above findings I find that the landlord is entitled to an order of possession effective two days after service.

Is the landlord entitled to a monetary order and, if so, in what amount?

I find that the landlord has established her monetary claim of \$2100.00 comprised of arrears of rent for April, May, June and July in the amount of \$2000.00 and the filing fee of \$100.00. I order that the landlord retain the security deposit of \$250.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1850.00.

The landlord did not claim for arrears of rent or loss of rental income for August onwards. She may make a separate claim for any arrears of rent accrued since July.

Conclusion

- a. An order of possession effective two days after service has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order in the amount of \$1850.00 has been granted to the landlord. If necessary, this order may be filed in the Provincial Court and enforced as an order of that court.

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 30, 2016

Residential Tenancy Branch