



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, LAT, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution seeking a monetary order for compensation and orders to have the respondent make repairs; to allow the applicant to change locks; and for a rent reduction.

The hearing was conducted via teleconference and was attended by the applicant; the respondent; his translator and two witnesses. I note however, during the hearing the respondent's witness JW attempted to provide testimony but the respondent did not want her to so I had the witness leave the call and be prepared should we need to call her into the hearing. The witness was not called. In addition, the witness GM did not provide any testimony during the hearing.

At the outset of the hearing the respondent submitted that there was not a tenancy relationship with the applicant. The respondent submitted that he had a tenancy agreement with another party (RM). The respondent stated that as per the tenant's request written request he "assigned" the tenancy to the applicant. The respondent stated that the tenant RM was still living in the rental unit.

In support, the landlord has submitted a copy of a letter from the tenant RM to the landlord that states, in part: "This is a formal request to assign a room on my existing tenancy agreement to SH. To share my bedroom. The landlord cannot unreasonably refuse consent."

The applicant submitted that he had previously been living in an adjacent rental unit and when that tenancy ended he moved into the subject rental unit as the tenant RM's boyfriend. He stated that the tenant RM assigned all her rights to the tenancy to him because she was fearful of dealing with the respondent. The applicant did not have any evidence from the tenant RM to confirm that he had authority to act on her behalf or that she intended for him to be responsible for the tenancy.

The applicant submitted that he had paid rent directly to the respondent on more than one occasion. The respondent stated that the applicant had not paid rent on any occasion but rather it had always been paid by the tenant RM.

One of the issues raised in this Application is the request by the applicant to provide him with a key to the rental unit. The applicant stated that they had a space problem in the rental unit and so he moved all of his personal belongings out of the rental unit. He testified that the tenant RM was not aware he was doing this; got mad; and thought he was moving out of the rental unit. He stated that she must have asked the respondent to change the locks.

The applicant further testified that the tenant RM would not give him a key. He stated that she had said that the respondent had threatened her with immigration consequences if she gave a key to the applicant. The applicant had no evidence, such as an affidavit from the tenant RM, confirming this position.

The respondent submitted that the tenant RM had asked him to change the locks and that both the tenant and the local police requested that a key not be given to the applicant. The landlord provided no documentary confirmation of this position.

Section 34(1) of the *Act* states that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit. Section 34(2) states that if a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

Residential Tenancy Policy Guideline #19 states that assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. When a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment.

From the submissions of both parties and on a balance of probabilities I make the following findings:

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me, the respondent disputes the applicant's submission that he had paid rent to the respondent directly. However, the applicant has provided no additional evidence or support for this position. As such, I find the applicant has failed to establish that any rents were paid from him to the respondent during the time he had been living in the rental unit.

From the respondent's submission of the letter from the tenant RM I find that the tenant was not requesting an assignment as defined in Section 34 of the *Act* and further explained in Policy Guideline #19. Upon review of the specific language used by the tenant I find she was not requesting that the applicant take over the obligations of the

tenancy but rather she was seeking permission from the landlord to have the applicant move into the rental unit.

Furthermore, in the absence of any written declarations from the tenant RM or her participation in this hearing; in light of the fact that the applicant stated that the tenant RM had requested the respondent change the locks; and she has refused to give him a key to the rental unit, I find the applicant has no standing in this tenancy and is not acting on behalf of the tenant RM.

Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to an order to have the respondent make repairs; to change the locks of the rental unit; and reduce the rent and to a monetary order for compensation and to recover the filing fee from the respondent for the cost of the Application for Dispute Resolution, pursuant to Sections 31, 32, 65, 67, 70, and 72 of the *Residential Tenancy Act (Act)*.

Conclusion

As I have determined the applicant has no tenancy relationship with the respondent, I dismiss this Application for Dispute Resolution in its entirety.

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: November 2, 2016

Residential Tenancy Branch

