



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, CNC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy for cause.
- b. An order that the landlord comply with the Act and also court order.
- c. An order that the landlord provide a separate lease agreement for each of the suites.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

RJP did not appear at the hearing.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant failed to provide the landlord with her evidence within 2 weeks of the date of the hearing as required by the Rules of Procedure. I determined the landlord was not prejudiced and that I could consider the tenant's materials.

The landlord has not served a one month Notice to End Tenancy on the Tenant. The landlord served a 10 day Notice to End Tenancy for non payment of rent for November. The issue is before another arbitrator after a hearing on December 22, 2016. The parties advised they have not received a decision from that hearing.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail on December 31, 2016.

Preliminary Matter:

The landlord has not served a one month Notice to End Tenancy on the Tenant. As a result I dismissed the Tenant's application to cancel the one month Notice to End Tenancy. The issue of the validity of the 10 day Notice to End Tenancy is before another arbitrator and is not part of this hearing. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that the landlord comply with the Act and court order?
- b. Whether the tenant is entitled to an order that the landlord provide 2 separate lease agreements for the 2 suites in the rental property?

Background and Evidence

Neither party provided a copy of the tenancy agreement. However, the testimony given indicates that on September 19, 2016 the applicants signed a tenancy agreement in writing with the landlord that provided that the tenancy would start on October 1, 2016, end on October 31, 2017 and become month to month after that. The written tenancy agreement provided that the rent was \$3000 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1500 and a pet damage deposit of \$750 on September 19, 2016. The written tenancy agreement identified RJP's mother and brother as tenants. However, they never signed the agreement.

The rental property is composed of an upstairs and downstairs unit. RJP was in a personal relationship with the applicant. It was intended that the mother of RJP and his brother would live in the downstairs unit and the applicant and RJP would live in the upstairs unit.

The applicant ST testified that it was intended that the parties enter into separate agreements. The landlord testified he was dealing with RJP and he gave him a choice of having 2 separate tenancy agreements or one. RJP testified that one tenancy agreement was preferred. At any rate the written tenancy agreement provided that it was for the entire house (the two units included) with the rent set at \$3000 per month. The utilities for the house were put into the names of the applicant ST.

On October 19, 2016 the applicant terminated her common law relationship with RJP. He moved from the upstairs unit to the basement unit and began living with his mother and brother.

ON November 1, 2016 a dispute arose between the Tenant and her ex-common law partner as to who was to pay the \$3000 rent. The tenant agreed to pay \$900 (which was paid to the landlord). The balance was to be paid by her ex-common law partner and her mother and brother. No further monies were paid. The landlord subsequently issued a 10 day Notice to End Tenancy dated November 8, 2016. That Notice to End Tenancy alleged \$2100 is owed. The applicant filed an application to dispute that Notice and that is the subject of the hearing that was held on December 22, 2016.

The relationship between the applicant and her ex-common law partner and his family has deteriorated and there have been incidents of violence where the police have been called.

There is a family court consent order dated November 22, 2016 where it was agreed the mother and brother of RJP would not attend the rental unit occupied by the applicant, RJP could attend provided he was invited and would have to leave if requested by the applicant and the applicant and her children would not attend the basement suite.

The landlord testified that in December he was given a cheque from the applicant in the sum of \$1700. He applied that to the outstanding balance for November. He further testified a further \$800 has been paid. Thus he testified he is owed \$2600 for December 2016 and \$3000 for January 2017. He stated he has no interest in reinstating the tenancy or splitting the tenancies into two as the tenants failed to pay the rent and there is no agreement as to the rent for the separate units.

Analysis:

After carefully considering all of the evidence I determined the tenant failed to establish a basis for the orders that she seeks based for the following reasons:

- I am satisfied based on the evidence presented that the tenancy agreement between the parties was for the entire house (the upstairs and basement units) with rent at \$3000. The tenant failed to prove that it was the intention of the parties for there to be two separate tenancies agreements.
- I determined there was no legal basis to order the landlord to enter into two separate tenancy agreements. The landlord is entitled to rely on the tenancy agreement that was entered into by the parties. The tenant acknowledged that there was no agreement between the tenants and the landlord as to how the rent was to be divided between the two rental unit.
- I am satisfied based on the evidence that the tenancy agreement is binding on the parties even though RJP's mother and his brother have not signed it.

- The family court order dealt with the visitation rights as between the tenants. The landlord was not a party to that consent order and it does limit the landlord's rights. The provincial court does not have jurisdiction to deal with residential tenancy issues and possession of the rental property.
- At the time of the hearing the arbitrator in the previous hearing had not rendered a decision. That decision has now been rendered and the results are consistent with my analysis. The arbitrator in that decision determined that the written agreement was valid and that there was one tenancy. It held that the Tenants failed to pay the rent when due and granted the landlord an Order for Possession on 2 days notice. That decision is binding on the parties on the basis of the principle of res judicata.

Determination and Orders:

For the reasons set out above I dismissed the tenant's application.

This Decision is final and binding on the parties.

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: January 25, 2017

Residential Tenancy Branch