



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, PSF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Applicant in which the Applicant applied for an Order requiring the Respondent to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement and for an Order requiring the Respondent to provide services or facilities required by law.

The Applicant stated that on January 18, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondent, via registered mail. The Respondent acknowledged receipt of these documents.

On February 01, 2017 the Applicant submitted 7 pages of evidence to the Residential Tenancy Branch. The Advocate for the Applicant stated that these documents were personally served to the Respondent on February 02, 2017. The Respondent acknowledged receiving these documents. The Respondent stated that he has had sufficient time to consider the documents and they were accepted as evidence for these proceedings.

Both parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Respondent to comply with the *Act* or the tenancy agreement and/or for an Order requiring the Respondent to provide services or facilities required by law?

Background and Evidence:

The Applicant stated that:

- he moved into the rental unit on October 01, 2016;
- he had his own room in the rental unit;
- he shared the kitchen, bathroom, and living room with a male named Rodney;

- he discussed this living arrangement with Rodney, who agreed that the Applicant could move into the rental unit;
- he agreed to pay Rodney \$450.00 per month for living in the rental unit;
- he initially paid rent to Rodney;
- he started paying his rent directly to the Respondent because Rodney wanted the rent prior to the first day of each month;
- sometime in January of 2017 Rodney moved his property out of the rental unit;
- he thinks Rodney changed the locks on the upper and lower access doors to the rental unit in January of 2017, although he is not certain as he lost his key to the unit;
- the Respondent returned \$225.00 of the rent he paid for January of 2017; and
- the Applicant did not inform the Respondent of problems with the rental unit until after Rodney removed his property from the rental unit.

The Respondent stated that:

- he has a tenancy agreement with Rodney;
- he does not believe he has a tenancy agreement with the Applicant;
- Rodney has lived in the rental unit for 3.5 or 4 years;
- Rodney is required to pay rent of \$900.00 per month;
- over the years Rodney has had several roommates who help him with the rent;
- Rodney has to pay \$900.00 per month in rent even if he has nobody living with him to help with the rent payment;
- he was aware the Rodney had allowed the Applicant to move into the rental unit;
- he learned that the Applicant had moved into the rental unit when he was asked to sign a shelter information form;
- he understands the Applicant moved into the rental unit on October 01, 2016;
- the Applicant had his own room in the rental unit;
- the Applicant shared the kitchen, bathroom, and living room with Rodney;
- he understands that the Applicant agreed to pay Rodney \$450.00 per month for living in the rental unit;
- he understands the Applicant paid rent to Rodney for a few months;
- the Applicant began paying rent directly to the Respondent in January of 2017;
- he understands that Rodney moved the Applicant's property out of the rental unit on January 07, 2017;
- he gave the Applicant's property to the Applicant's sister after it was moved from the rental unit;
- he understands Rodney changed the lock to the basement door of the residential complex in January of 2017;
- Rodney told him he did not change the lock on the door to the rental unit;
- he told Rodney that he could not remove the Applicant from the unit without following Residential Tenancy Branch procedures;
- Rodney told him he did not need to follow those procedures as the Applicant was only a roommate; and

- he returned \$225.00 of the rent the Applicant paid to him for January of 2017 because he was unable to live in the rental unit for the full month of January.

The Applicant is seeking an Order requiring the Respondent to provide the Applicant with access to the rental unit and an Order requiring the Respondent to protect the Applicant's quiet enjoyment of the rental unit.

Analysis:

On the basis of the testimony of the Respondent and the absence of evidence to the contrary, I find that he has a tenancy agreement with Rodney; that the tenancy agreement requires Rodney to pay monthly rent of \$900.00; and Rodney has periodically had roommates to help with the rent, with the consent of the Respondent.

The *Residential Tenancy Act (Act)* defines a 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 license to occupy. On the basis of the testimony of the Applicant and the Respondent, I find that these parties did not enter into a tenancy agreement. I find it very clear that Rodney permitted the Applicant to move into the rental unit and that the Applicant agreed to pay rent to Rodney. Conversely, there is no evidence that the Respondent entered into an agreement with the Applicant in regards to occupying the rental unit or that the Respondent would pay rent to the Applicant.

As there is no evidence that Rodney was acting on behalf of the Respondent when he allowed the Applicant to move into the rental unit, I cannot conclude that the Applicant is a tenant in this rental unit.

Residential Tenancy Branch Guideline #13, with which I concur reads, in part:

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 tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

On the basis of the testimony of the Applicant and the Respondent, I find that the Rodney permitted the Respondent to move into the rental unit on the basis of an agreement that he would pay rent to Rodney. I therefore find that the Applicant is an occupant, as that term is defined by policy guidelines.

In determining that the Applicant was an occupant, rather than a tenant, I placed no weight on the undisputed testimony that the Respondent signed a shelter information form. I find it reasonable to conclude that the Respondent signed that form simply to confirm that the Applicant was living in the rental unit and paying rent of \$450.00, which does not establish that the Applicant and the Respondent entered into a tenancy agreement.

In determining that the Applicant was an occupant, rather than a tenant, I placed no weight on the undisputed testimony that the Applicant began paying rent directly to the Respondent in January of 2017. As the Respondent was aware that the Applicant was paying a portion of the rent Rodney was required to pay I find it reasonable for the Respondent to simply accept the payment directly, rather than require it be paid to Rodney. I do not find that this payment establish that the Applicant and the Respondent entered into a tenancy agreement.

In determining that the Applicant was an occupant, rather than a tenant, I placed no weight on the undisputed evidence that the Respondent returned a portion of the rent that was paid for January of 2017. As the Applicant was under no obligation to pay rent to the Respondent, I find that the decision to return a portion of the rent to the Applicant was reasonable and ethical. The Respondent retains the right to recover any unpaid rent from Rodney, who is the tenant of the unit.

As the Applicant has failed to establish that he has a tenancy agreement with the Respondent, I find that the Respondent is not obligated to intervene in the relationship between Rodney and the Applicant. The Applicant retains the right to pursue compensation from Rodney in a court of competent jurisdiction.

Conclusion:

As the Applicant has failed to establish that he has a tenancy agreement with the Respondent, the Application for Dispute Resolution is dismissed.

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: February 07, 2017

Residential Tenancy Branch