



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR CNC CNR MNR MNDC O FF

Introduction

This hearing dealt with applications from both the landlord and the respondent under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and damage pursuant to section 67; and authorization to recover the filing fee pursuant to section 72.

The "tenant"/respondent applied for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and 1 Month Notice to End Tenancy for Cause pursuant to section 46 and 47; as well as recovery of the filing fee pursuant to section 72.

Both parties attended and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions on all issues at this hearing.

Preliminary Issue

The landlord issued a 1 Month Notice to End Tenancy on April 1, 2017 relying on the ground that the tenant has assigned or sublet the rental unit without the landlord's permission.

The respondents named in this application, described as "tenants" by the landlord are not the original tenants who signed a residential tenancy agreement with the landlord. The landlord testified that the original tenants have vacated the rental unit. The original tenants were not served with the landlord's application with notice for this hearing. The landlord testified that the current "tenants" (referred to herein as "the respondents") are residing in the rental unit without the landlord's permission.

A tenancy consists of an agreement between two parties to provide living accommodation in exchange for rent payment. In this case, the landlord testified that the respondents gave him money on one occasion: the respondent provided money to the landlord stating that he and his girlfriend were staying in the residence while the original tenants were out of town. The respondent testified that he told the landlord he was paying rent *on behalf* of the original tenants on that occasion. The respondent

testified that, when the original tenants moved out, he and his girlfriend remained in the rental unit. The respondent testified that he did not request the landlord's permission to remain in the rental unit nor did he sign a written tenancy agreement with the landlord.

The *Residential Tenancy Act* applies to tenancy agreements. Both parties acknowledged that there is no existing tenancy agreement between them: there is no written tenancy agreement created and there is no verbal agreement that has been reached between the parties. The applicant/landlord testified that he wanted the respondents to leave his rental unit. The respondents testified that they wanted to stay in the rental unit and were prepared to pay rent. The respondents testified that the landlord has refused to sign their subsidy forms so that they can pay him. The landlord testified that the respondents never properly applied to live in the unit.

The landlord testified that he has never granted permission for the respondents to live in the rental unit. He testified that he never gave authorization to the original tenants to sublet the unit. I find that this is not a tenancy created pursuant to the *Residential Tenancy Act*. A tenancy consists of an agreement (a meeting of the minds) between two parties. The evidence of both parties is that there is no agreement in this case.

The parties are provided with sections of the Act that may be relevant to this situation below the conclusion of this decision including the definitions section (section 1); the terms of a tenancy agreement (section 13) as well as the sublet provisions (section 34).

Conclusion

Under the current circumstances, I dismiss both the landlord's application.
I dismiss both the tenant's application.

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: May 26, 2017

Residential Tenancy Branch

Sections for Consideration:

Section 1: "**tenancy**" means a tenant's right to possession of a rental unit under a tenancy agreement;

Section 13: (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

Section 34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.