



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: CNC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the one month Notice to End Tenancy for cause.

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.

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.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlords.

At the start of the hearing the applicant stated had entered into an agreement to vacate the rental unit on or before June 15, 2017. He sought an order amending the application requesting that the arbitrator make a monetary order against the respondent for the return of the security deposit and pet damage deposit. I dismissed this request. The Act provides that a tenant must wait 15 days from the later of the end of the tenancy or when the landlord receives the tenant's forwarding address in writing before the tenant makes a claim for the return of these two deposits. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy?

Background and Evidence:

TG was the registered owner of the rental property. In December 2015 NG entered into a residential tenancy agreement with T G using the standard residential tenancy agreement from the Residential Tenancy Branch.

On May 28, 2016 MJ entered into an agreement with NF to sublet a room commencing June 1, 2016 on a month to month basis. The rent was \$840 per month. The applicant paid a damage deposit of \$420 and a pet deposit of \$450 for a total of \$870.

A dispute arose between the applicant and NF and the applicant. NF took the position that no landlord-tenant relationship exists between the applicant and NF. NF hired a solicitor and the applicant was given one month Notice to End Tenancy the purported to end the tenancy on June 1, 2017.

TG sold the rental property with completion on May 30, 2017.

The applicant and the solicitor for NF have reached a settlement whereby the Tenant has agreed to vacate the rental unit on or before June 15, 2017.

Analysis:

After carefully considering all of the evidence I determined that the applicant does not have a tenancy relationship with TG. The tenancy is between TG and NF. I do not accept the submission of the applicant that NG was acting as an agent for TG. The documentary evidence indicates there is no contractual relationship between the applicant and TG. As a result I dismissed the application against TG.

There may or may not be a tenancy relationship between the applicant and NF. The following are the relevant provisions of the Residential Tenancy Act:

Section 1 of the Residential Tenancy Act provides as follows:

"tenancy agreement" means 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 a rental unit;

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I determined it was not appropriate to make a determination as to whether a residential tenancy arrangement existed between the applicant and NF in the circumstances of this case for the following reasons:

- The applicant has entered into an agreement with the solicitor for NF and is vacating the rental unit on or before June 15, 2017. The issue is moot.
- The solicitor for NF did not attend the hearing. This is understandable as there is an agreement between the applicant and NF that the applicant would vacate the rental unit. It would not be appropriate to make a determination as to whether the Act applies in circumstances such as this as the tenant would have been denied a opportunity to have her solicitor make submission on this point.
- The applicant did not have his documents with him at the time of the hearing and was not able to provide a copy of the agreement between NF and him.

As a result I dismissed the applicant's claim against NF with liberty to re-apply. If the applicant and NF are not able to settle the issue of the return of the security deposit and pet damage deposit, the applicant retains the right to file a claim with the Residential Tenancy Branch and issue of whether this is a residential tenancy relationship would be determined by the arbitrator who hears the case

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: June 14, 2017

Residential Tenancy Branch