



Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, OLC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application for:

- unspecified 'Other' relief; and
- an order for the landlord to comply with the *Act*, by providing the tenant with a complete and proper form indicating their intentions, pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was represented at the hearing by his advocate, N.C. (the "tenant").

A copy of the tenant's application for dispute resolution and evidentiary package was sent to the landlord by way of Canada Post Registered Mail. A copy of the receipt was provided to the hearing. The landlord is found to have been served with these documents on June 7, 2017. Pursuant to sections 88 & 89 of the *Act* the landlord is found to have been duly served with the tenant's documents.

### Issue(s) to be Decided

Should the landlord be directed to comply with the *Act*?

Is the eviction notice issued on May 15, 2017 valid?

### Background and Evidence

Testimony was provided by both the landlord and the tenant, that the tenant began occupying the rental unit in September 2016. No formal tenancy agreement was signed between the parties. The tenant originally paid \$600.00 to former resident J.D., who was the named tenant on the tenancy agreement with the landlord.

The tenant moved into the premises without the permission of the landlord and was originally taken in as a roommate by J.D., after J.D. advertised a room in the home online. The relationship between the tenant and J.D. became fractured and this lead the tenant, in January 2017, to pay rent directly to the landlord's mother.

On May 15, 2017, an Order of Possession was granted to the landlord by an arbitrator appointed under the *Act* to end J.D.'s tenancy. Following J.D.'s departure from the property, the tenant remained in the home. On May 31, 2017, the landlord wrote a letter to the tenant informing him of the Order against J.D. and advising him that he had until June 30<sup>th</sup>, 2017 to vacate the premises.

The tenant is seeking an Order directing the landlord to comply with the *Act*. The tenant argued that he has not been served with a Notice to End Tenancy and therefore has no reason to vacate the property. Furthermore, the tenant argued that he had established a separate tenancy with the landlord when he began directly paying rent to the landlord's mother for which receipts were provided. These receipts state that \$600.00 was received from the tenant for rent. The landlord is named on the receipts, though they are signed by his mother. In addition, the tenant claims that he signed a copy of a tenancy agreement with the landlord's mother in January 2017.

Further oral testimony was provided by the tenant that a tenancy agreement had been signed between himself and the landlord's mother in January 2017. The landlord did not dispute this; however, he argued that his mother had no authority to enter into such an agreement with any party. The tenant explained that he could not produce a copy of this tenancy agreement, because the landlord had refused to provide him with a copy of the January 2017 agreement signed between the tenant and the landlord's mother.

The landlord explained that receipts were only issued to the tenant because the tenant had explained to him that he required receipts so that he could provide the disability agency proof of rent payments. The landlord stated that his mother was not his agent and did not have permission to enter into rental agreements with people. The landlord continued by explaining that rent was paid to his mother because he spends the majority of his time in Asia and it was simply a matter of convenience that rent could be collected by her, following the breakdown of everyone's relationship with tenant J.D.

During the course of the hearing the landlord explained that the rental unit in question was a single family home that was not divided into separate suites. The landlord maintained that the tenant was a sub-lessee of tenant J.D. and was therefore subject to the Order of Possession issued to the landlord in May 2017 by the *Residential Tenancy Branch*.

### Analysis

The tenant has applied for an Order pursuant to section 62 for the landlord to comply with the *Act*. The tenant is seeking to have the landlord directed to follow the proper channels as prescribed under the *Act* to end their tenancy.

The landlord argued that no tenancy existed, that the tenant was simply a guest of J.D., the person with whom a tenancy agreement was signed, and that as a result the tenant was subject to the Order of Possession issued against J.D. on May 12, 2017.

Evidence was presented at the hearing by the tenant that a falling out occurred between himself and J.D. As a result of this, rent was paid to the landlord's mother. Receipts were issued to the tenant for this rent. Furthermore, a tenancy agreement was signed between the tenant and the landlord's mother in January 2017. The landlord explained that his mother was not his agent, had no authority to enter into a tenancy agreement with any party, and accepted rent on his behalf out of convenience. In addition, he stated that receipts were only issued to the tenant because they were requested.

After reviewing the past arbitrators' May 12, 2017 and May 29, 2017 decisions concerning this tenancy, along with the evidence and testimony presented at this hearing of July 6, 2017, I find that the parties have established an oral tenancy and the tenant has a right to occupancy separate from the written agreement entered into between the landlord and tenant J.D. Section 1 of the *Act* provides definitions of terms commonly used in the *Act*. A "tenancy agreement" is defined in this section as, "An agreement, whether written or oral...between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities."

This section also provides a definition of "landlord" as being, "The owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement."

I find that despite the landlord's argument, that the landlord's mother has exercised powers and performed duties under the *Act* that are consistent with those of a landlord. Specifically, the landlord's mother accepted rent on a monthly basis, signed dated receipts and allegedly signed a tenancy agreement with the tenant.

During the hearing undisputed testimony was presented by the tenant that he signed a tenancy agreement with the landlord's mother in January 2017. The tenant informed

that the landlord would not produce a copy of this agreement to him upon request. The landlord did not deny that his mother had done so, rather he contended that she did not have the authority to enter into such an agreement. As the landlord's mother did not attend the hearing, I find based on the tenant's undisputed testimony and pursuant to the definitions of "landlord" and "tenancy agreement" contained in section 1 of the *Act*, that an oral tenancy was established between the parties.

The decision of May 12, 2017 issuing an Order of Possession to the landlord was silent on whether that Order applied to any other person on the premises save for the named tenant, J.D. Furthermore, the decision made no mention of any other person on the property other than, J.D. The landlord had a May 29, 2017 hearing scheduled in which he sought an Order of Possession, a Monetary Order and a return of the Filing Fee from tenant J.D.; however, both he and tenant J.D. failed to attend this hearing. The Arbitrator dismissed the landlord's application with leave to re-apply.

I find that the tenant has not been served with a Notice to End Tenancy, or an Order of Possession. Nor has a determination been made concerning the current state of his tenancy. As noted above, I find the evidence establishes that an oral tenancy has been created and I order that this tenancy shall continue until it is ended in accordance with the *Act*.

### Conclusion

I find that there is a tenancy agreement between the tenant and the landlord. I further find that this tenancy shall continue until it is ended in accordance with the *Act*.

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: July 11, 2017

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Residential Tenancy Branch