



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an Order that the landlord comply with the *Act*, regulation and tenancy agreement (the "Repair Order") pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The named landlord primarily spoke for both co-landlords.

As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's 2 Month Notice dated July 12, 2017 and the landlord's evidence. The landlord testified that they received the tenant's application for dispute resolution dated July 25, 2017 and the tenant's evidence. I find that the parties were duly served with the 2 Month Notice, the application for dispute resolution and their respective evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the 2 month Notice? If not, should the landlord be issued an order of possession on the basis of the 2 Month Notice?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fees for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. The rental building is a detached home. The tenant occupies the downstairs suite. The tenant has been occupying the suite since October, 2016. There is no written tenancy agreement. The main suite of the rental building was occupied by other tenants, relatives of the tenant. The landlord said that they entered a tenancy agreement with the upstairs tenants and were unaware of the tenant's occupancy of the basement suite. The tenant testified that he understood that he and the upstairs tenants were co-tenants. The tenant contributed \$600.00 to the monthly rent for the building and paid \$270.00 towards the damage deposit at the start of the tenancy. In addition the tenant contributed to the utility payments for the rental building. The tenant's contributions were collected by the upstairs tenants who paid the landlord. Copies of the receipts issued by the upstairs tenants to the tenant were submitted into written evidence.

The landlord sent the upstairs tenants an email dated July 6, 2017 stating they wished to "reclaim the basement suite". The landlord informed the upstairs tenants they would "adjust the rent accordingly and will be applying for the owner moving back in clause". The landlord subsequently issued a 2 Month Notice naming just the tenant and identifying just the basement suite on July 12, 2017. The tenant continued to make monthly rent payment which was collected by the upstairs tenants. No evidence was submitted that the landlord provided either the tenant or the upstairs tenants with compensation pursuant to section 51 of the *Act*.

Subsequently, by a letter dated August 26, 2017 the upstairs tenants gave written notice to the landlord of their intention to end the tenancy on October 1, 2017. The parties testified that the upstairs tenants no longer reside in the rental building. The landlord testified that the security deposit was returned to the upstairs tenant at the end of the tenancy. The tenant testified that no amount of the security deposit was provided to him by either the landlord or the upstairs tenants.

On October 1, 2017 the tenant paid the landlord a security deposit of \$300.00 and rent for the month of October in the amount of \$600.00. The landlord issued receipts for the

payments. The receipts were submitted into written evidence. The receipts state; “\$300.00 Damage Deposit Basement Suite” and “\$600.00 Rent for Basement Suite”.

The landlord testified that they also asked for the tenant to provide \$100.00 pre-payment for utilities but the tenant refused to provide that payment.

Analysis

Residential Tenancy Policy Guideline 13 clarifies the when individuals are considered to be co-tenants under a tenancy agreement. Co-tenants are one or more tenants who rent the same property under a single tenancy agreement. Co-tenants are considered joint and severally liable for a tenancy.

In the case at hand where the landlord failed to prepare a tenancy agreement in writing as required pursuant to section 13(1) of the *Act*, I must look to the surrounding circumstances to determine the terms of the tenancy agreement. Based on the totality of the evidence I find that the tenant was a co-tenant with the upstairs tenants under the single tenancy agreement of October, 2017. The tenant contributed to the rent and the initial damage deposit, the landlord was renting out the entire rental building and the correspondence submitted into written evidence indicates that the landlord was aware of the tenant’s occupancy. I find that there was an enforceable tenancy agreement for the whole rental building between the landlord and the upstairs tenants and the tenant as co-tenants. That the landlord primarily dealt with the upstairs tenant is immaterial. The upstairs tenants may have collected the rental payments and dealt with the financial dealings with the landlord but they were doing so as representatives of all of the co-tenants.

I find that the landlord's 2 Month Notice of July 12, 2017 does not meet the form and content requirement of section 52 of the *Act* as it specifies that the landlord wishes to end the tenancy solely for the basement suite. I find that the tenancy agreement is for the entire rental building and a Notice to End tenancy for a specific suite fails on its form. Consequently, I find that the 2 Month Notice is of no effect.

I accept the undisputed evidence of the parties that the upstairs tenants provided written notice to end the tenancy on October 1, 2017. Guideline 13 provides:

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the

tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement.

I find that this applies to the circumstances at hand. I accept the evidence of the parties that the upstairs tenants have vacated the rental building and have ended the earlier tenancy originating October, 2016. I find that a new tenancy has been created by the parties for the basement suite as of October 1, 2017. The landlord accepted payment of monthly rent and a damage deposit from the tenant. The receipts issued by the landlord clearly state that they are accepted for rent and damage deposit. I find that the landlord's conduct of acceptance of the payments created a new tenancy agreement. If the landlord did not intend for a new tenancy agreement to be created they had the opportunity to not accept a payment for damage deposit or to issue receipts clarifying that any amount paid for rent was being accepted for "use and occupancy only" but they did not do so. I find that the landlord's conduct is consistent with establishing a new tenancy agreement with the tenant for the basement suite.

For the above reasons, I dismiss the landlord's application for an order of possession based on the landlord's 2 Month Notice dated July 12, 2017, without leave to reapply.

I find that there is an enforceable tenancy agreement with a monthly rent of \$600.00 for the basement suite of the rental building entered by the parties on October 1, 2017. This tenancy will continue until ended in accordance with the *Act*.

As the tenant's application was successful the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the 2 Month Notice is successful. The landlord's 2 Month Notice is of no force or effect.

The tenancy entered by the parties on October 1, 2017 will continue according to the *Act*.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount

on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: October 24, 2017

Residential Tenancy Branch