Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 26, 2018 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 14, 2018 (the "10 Day Notice"). The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing. M.T. appeared at the hearing 13 minutes late. M.T. confirmed he had authority to appear on behalf of Tenant T.D. and Tenant S.F. The hearing process was explained to the Landlord and M.T. and neither had questions about the proceedings when asked. The Landlord and M.T. provided affirmed testimony.

The Landlord had submitted the following evidence: the 10 Day Notice; a Buyer Statement of Adjustments; Direct Request Worksheets; an email from a real estate agent; an outline of police file numbers; a letter from the City of Surrey; two tenancy agreements; and a letter from a neighbour. Tenant T.D. and Tenant S.F. had not submitted evidence.

I addressed service of the hearing package and Landlord's evidence. The Landlord said she served Tenant T.D. and Tenant S.F. with the hearing packages by delivering them by hand to the rental unit on March 4, 2018. She said she left one package in the mail box and taped one package to the door. She said she understood the rental unit to be the address of Tenant T.D. and Tenant S.F. at the time. I do note the Landlord gave conflicting evidence about this point.

The Landlord said she served her evidence on Tenant T.D. and Tenant S.F. on April 24, 2018. She said she did not serve the letter from the neighbour on Tenant T.D. and

Tenant S.F. Pursuant to rule 3.17 of the Rules of Procedure, I excluded the letter as the Landlord did not comply with rule 3.14 which requires an applicant to serve their evidence on all respondents prior to the hearing.

M.T. said he received the hearing packages but did not know when. He said the packages were addressed to Tenant T.D. and Tenant B.F. In response, the Landlord said the packages were addressed to Tenant T.D. and Tenant S.F. M.T. said Tenant T.D. and Tenant S.F. did not get the hearing packages, although M.T. confirmed that he told Tenant T.D. and Tenant S.F. about the hearing.

M.T. said he received the Landlord's evidence a week or two before the hearing. M.T. said Tenant T.D. and Tenant S.F. had not had a chance to review the evidence because of their circumstances. M.T. explained that Tenant S.F. is dealing with very serious medical issues and is hospitalized and Tenant T.D. is taking care of Tenant S.F. M.T. confirmed that it was not due to the timing of service of the evidence that Tenant T.D. and Tenant S.F. had not had a chance to review the evidence. M.T. said he had "kinda" had a chance to review the evidence.

I proceeded with the hearing as I was satisfied based on the evidence of M.T. that Tenant T.D. and Tenant S.F. knew about the hearing. Further, I was satisfied that Tenant T.D. and Tenant S.F. had sufficient time to review the evidence although I acknowledge that they were unable to because of their circumstances. I also note that M.T. had time to review the evidence and M.T. is the one who appeared at the hearing on behalf of Tenant T.D. and Tenant S.F.

I reviewed the two tenancy agreements submitted by the Landlord with the Landlord and M.T. Both agreed the first tenancy agreement is between the previous owner of the rental unit, Tenant T.D. and Tenant S.F. Both agreed the tenancy started July 1, 2015 and is a month-to-month tenancy. Both agreed rent is $1,000.00 per month due on the first of each month. Both agreed there was a $500.00 security deposit and $250.00 pet damage deposit paid at the time the agreement was entered into. The Landlord said she still has these deposits. Both agreed the tenancy agreement was signed by the parties June 30, 2015.

The Landlord and M.T. agreed the second tenancy agreement is between the previous owner of the rental unit and Tenant B.F. Both agreed it relates to the same rental unit as the first agreement. Both agreed it started July 1, 2015 and is a month-to-month tenancy as well. Both agreed the rent is $1,000.00 per month due on the first of each month. I noted that the security deposit and pet damage deposit section states "on first

application". Both agreed the tenancy agreement was signed by the parties June 30, 2015.

It is my understanding from the evidence submitted that the Landlord purchased the rental unit and therefore became the new Landlord under the tenancy agreements.

The Landlord did not know why there are two tenancy agreements. The Landlord did not know whether the Tenants are under one tenancy agreement or two separate tenancy agreements. M.T. said Tenant T.D. and Tenant S.F. are under a separate tenancy agreement from Tenant B.F. M.T. said he knew this because he was present when the tenancy agreements were signed. I asked if there had been a discussion about the tenancies being separate tenancies and he said this discussion occurred in private. I asked how he knew there were two separate tenancies if the discussion occurred in private and he said it occurred between the previous landlord and Tenant B.F. while he was in the room. M.T. said he is not one hundred percent sure there are two tenancies but that he is ninety percent sure. M.T. said only one security deposit and one pet damage deposit was paid by the Tenants.

I find the Tenants are joint tenants under one tenancy agreement. I find this because the two tenancy agreements relate to the same rental unit and have basically the same terms and because the Tenants only paid one security deposit and pet damage deposit. I also note that the second tenancy agreement refers to the security deposit and pet damage deposit being held in the first tenancy agreement or "application".

The Landlord did not think the Tenants still resided at the rental unit. She said M.T. lives at the rental unit. However, the Landlord had not confirmed with Tenant T.D. or Tenant S.F. that they had moved out of the rental unit. At first, M.T. said he is the only person living at the rental unit. He then said Tenant B.F. still lives at the rental unit. He then said Tenant B.F. does not currently live at the rental unit because she is taking care of his mother, Tenant S.F. M.T. said Tenant B.F. moved out of the rental unit in February. M.T. said Tenant T.D. and Tenant B.F. live at the hospital with Tenant S.F. M.T. then said all the Tenants still have their possessions at the rental unit.

M.T. confirmed Tenant B.F. was aware of the hearing and that he had authority to appear for her at the hearing. I asked the Landlord if she wanted to amend the Application to include Tenant B.F. and she said she did. I amended the Application accordingly and this is reflected in the style of cause.

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Residential Tenancy Act* (the "*Act*") which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary. I told the parties that if they chose not to discuss settlement, I would make a final and binding decision in the matter. I told the parties that if they chose to discuss settlement and did not come to an agreement, that was fine and I would make a final and binding decision in the matter. I told the parties that if they did come to an agreement, I would write out the agreement in my written decision and make any necessary orders. I explained that the written decision would become a final and legally binding agreement. I told the parties that this meant none of the parties could change their mind later. The Landlord had a question which I did not answer as it related to what my decision on the dispute would be. The parties had no further questions.

I explained to M.T. that he is not a party to the proceeding as he is not a tenant under the tenancy agreement. I told him his role at the hearing was as agent for the Tenants. M.T. confirmed that he had authority to settle the dispute on behalf of the Tenants. I told M.T. that all Tenants would be bound by the agreement meaning that none of the Tenants could take issue with the agreement once finalized. M.T. said he understood this.

The parties agreed to discuss settlement and a discussion ensued.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession which could be served on the Tenants and enforced in court if the Tenants did not comply with the agreement. I confirmed with the parties that all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure from the other party or me. The parties did not have any final questions when asked.

Settlement Agreement

The Landlord and Tenants agree as follows:

1. The 10 Day Notice is cancelled.

2. The tenancy will end and all the Tenants will vacate the rental unit by 1:00 p.m. on May 31, 2018.

3. All rights and obligations of the Landlord and Tenants under the tenancy agreement will continue until the end of the tenancy.

4. The Landlord waives her right to seek compensation for the outstanding rent in the amount of $4,000.00 being $1,000.00 for four months of unpaid rent.

5. The Tenants are not claiming monetary compensation from the Landlord.

6. The Tenants will reimburse the Landlord for the $100.00 filing fee for this application. The Landlord can retain $100.00 of the security deposit paid by the Tenants under the tenancy agreement.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

Further to the settlement agreement, the 10 Day Notice is cancelled.

The Landlord is granted an Order of Possession for the rental unit which is effective at 1:00 p.m. on May 31, 2018. If the Tenants fail to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenants with this Order. If the Tenants fail to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order 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 *Act*.

Dated: May 15, 2018

Residential Tenancy Branch