



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- b. An order to recover the cost of the filing fee?

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 served on the landlord by posting on May 17, 2018. The applicant testified he served a copy of the Application for Dispute Resolution on MS (his co tenant) on May 17, 2018 by posting. His co tenant did not appear at the hearing. However, his co tenant is not identified as a party in the Application for Dispute Resolution.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and or tenancy agreement?
- b. Whether the tenant is entitled to recover the cost of the filing fee.

Background and Evidence:

This is an unusual case as it essence involves a dispute between two co-tenants.

Briefly the facts are as follows. The applicant and DS as co tenants entered into a month to month tenancy agreement with the landlord commencing on February 1, 2018. The rent was \$2500 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1250 prior to the start of the tenancy.

On April 25, 2018 DS gave the landlord notice in writing that he would be vacating the rental unit as of the end of May. The notice states "This is to confirm I will be vacating the residence at as of May 31st". The civic address of the rental unit was included in the notice.

On May 2, 2018 DS only entered into a month to month tenancy agreement with the landlord in writing for the rental unit that provided that the tenancy would start on June 1, 2018. The rent was \$2500 per month payable in advance on the first day of the month.

On June 5, 2018 DS changed the locks to the rental unit and denied access to the applicant. .

The applicant submits that action of the co tenant and the landlord is unconscionable and illegal. There was a dispute between the two co tenants as to the conduct of the individual co tenants.

The landlord submits this is a dispute between the two co tenants and he has nothing to do with it. He was given written notice by one co tenant that the tenancy was coming to an end and acted accordingly. He submits that as that original tenancy came to an end and he was free to enter into whatever agreements he could.

Analysis:

Policy Guideline 13 includes the following:

....

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. **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 (my emphasis).**

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. The tenant who moved out is not responsible for carrying out this new agreement.

The issue to be determined is whether the first tenancy between the landlord and the co tenants DS and SA was brought to an end when DS gave the landlord written notice he was vacating the rental unit at the end of May 2018.

DS did not appear at the hearing although he was given notice of the hearing. Based on the evidence presented I determined that while DS gave notice he was vacating the rental unit at the end of May he failed to do so. He continued to live in the rental unit after that date on the basis that he alone had entered into a new tenancy agreement with the landlord.

Neither party was able to provide case authority.

After carefully considering all of the evidence I determined the Notice to End Tenancy dated April 25, 2018 given by DS to the landlord did not end the tenancy as the Policy Guidelines required that in order for the tenancy to come to an end the tenant giving the Notice must move out. I determined that to rule otherwise would allow one tenant to collude with the landlord to force the other tenant out of a rental unit without giving the other tenant proper notice respond to the situation.

It follows that the applicant has a legal right to access to the rental unit and to reside in the rental unit.

Section 31(2) and (3) of the Residential Tenancy Act provides as follows:

Prohibitions on changes to locks and other access

31 (2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Based on the evidence presented I determined that DS has changed the locks. Neither party gave evidence as to whether the landlord agreed to the changing of the locks by the co tenant. If the landlord gave permission I determined the landlord has acted contrary to the Act and I order that the landlord comply with the Act by requiring that the co tenant allow the tenant to regain access either by proving a key or changing the locks to the original ones. If the co tenant DS did not obtain the landlord's permission I ordered that the landlord comply with the Act to ensure the applicant has access to the rental unit.

If the landlord fails to do above and the co tenant continues to deny access to the applicant the parties are referred to sections 7 and 28 of the Act which would give the applicant the right to file another claim seeking a monetary order against the landlord. . Those sections are set out below:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.³¹ (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

I dismissed the claim of the tenant to recover the cost of the filing fee from the landlord as this is in essence a dispute between tenants. However, if the landlord fails to comply with the order set out above the tenant would retain the right to file a claim against the landlord for the landlord's failure to comply with the Act.

This decision is final and binding on both 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 11, 2018

Residential Tenancy Branch