



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN

Introduction

On April 5, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession for the rental unit, and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) and the Tenant Ms. L.G. attended the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony. The Tenant testified that she received a copy of the Landlord’s documentary evidence.

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Landlord named the estate of Tenant, Mr. K.T. on the application. The Tenant passed away on March 4, 2018. The Tenant’s sister, Ms. L.G. attended the hearing; however, nobody appeared as a personal representative of the estate of Mr. K.T.

Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that tenancy began on January 1, 2017, as a fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$850.00 is to be paid on or before the first day of each month. The Tenants paid a \$425.00 security deposit.

The Landlord testified that on November 27, 2017, the Tenant Ms. L.G. gave written notice to end her tenancy. The Tenant then requested additional time to move out. The Landlord granted the Tenant additional time to move out and removed her name from the tenancy agreement.

The Landlord continued the tenancy with Mr. K.T.

The Landlord was informed that the Tenant Mr. K.T passed away on March 4, 2018. The Landlord provided a copy of a certificate of death that the Landlord received from the mother of the Tenant.

The Landlord testified that the former Tenant Ms. L.G. is still living at the rental unit and has refused to leave.

The Landlord submitted that Ms. L.G. is not a Tenant and has no legal right to remain in the rental unit. The Landlord testified that Ms. L.G. has allowed her boyfriend to move into the rental unit and no rent has been paid since March 2018.

The Landlord is seeking an order of possession for the rental unit.

In reply, the Tenant testified that she contacted the Landlord and requested to be permitted to live in the unit and pay rent. She testified that the Landlord refused. Ms. L.G. confirmed that she has not paid any rent.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

The Tenant, Ms. L.G. gave written notice to end her tenancy and was removed from the tenancy agreement. The tenancy continued in the name of Mr. K.T.

Ms. L.G. does not have the right to rescind a written notice to end tenancy. Only when a Landlord agrees, may a written notice to end tenancy be withdrawn.

Ms. L.G. continued to stay at the rental property as a guest of the Tenant Mr. K.T.

When the Tenant passed away, the Landlord was under no obligation to enter into a tenancy agreement with the Ms. L.G. The Landlord did not accept rent from Ms. L.G.

and therefore I find that a new tenancy contract has not been established. I find that Ms. L.G. is not a Tenant at the rental unit.

Section 44 of the Act provides that a tenancy ends if the director orders that the tenancy is ended.

Section 62 of the Act provides that the director has authority to determine disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I order that the tenancy with Mr. K.T. has ended. The estate of Mr. K.T. has not paid the rent for three months and the rental unit is being occupied by unauthorized occupants.

I find that the Landlord is entitled to an order of possession, effective two days after service on the Tenant and occupants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with the application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to withhold \$100.00 from the Tenants security deposit.

Conclusion

The Tenant is deceased, and the former Tenant has no legal right to continue a tenancy at the rental unit.

I order that the tenancy with Mr. K.T. has ended. The estate of Mr. K.T. has not paid the rent for three months and the rental unit is being occupied by unauthorized occupants.

I find that the Landlord is entitled to an order of possession, effective two days after service on the Tenant and occupants.

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