



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File No. 31000012: CNL DRI RR MNDC ERP FF

File No. 31023235: LAT LRE OLC FF

Introduction

This hearing was convened as a result of the Applicant's Applications for Dispute Resolution, made on September 24, 2017, and July 29, 2018 (the "Applications"). The Applicant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 22, 2017 (the "Two Month Notice");
- an order relating to a disputed rent increase;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an monetary order for money owed or compensation for damage or loss;
- an order that the Respondents compensate the Applicant for the cost of emergency repairs made during the tenancy;
- an order authorizing the Applicant to change the locks to the rental unit;
- an order suspending or setting conditions on the Respondents' right to enter the rental unit;
- an order that the Respondents comply with the *Act*, regulations, and/or the tenancy agreement; and
- an order granting recovery of the filing fee (x2).

The Applicant attended the hearing and was assisted by S.W., his father and advocate. The Respondents attended the hearing and were accompanied by V.T., legal counsel. The parties provided affirmed testimony.

File No. 31000012 was remitted to the Residential Tenancy Branch for a new hearing concerning the Two Month Notice, pursuant to the order of Mr. Justice N. Smith, dated March 29, 2018. The parties were provided with a Notice of Dispute Resolution Hearing by the Residential Tenancy Branch. Both the Respondents and the Applicant acknowledged receipt.

With respect to File No. 31023238, the Respondents confirmed receipt of the Applicant's Application package and documentary evidence. Further, the Applicant confirmed receipt of the Respondents' documentary evidence in response. Both parties were in attendance and were prepared to proceed. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were advised to refer me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Jurisdiction

The parties confirmed the Respondents rent the rental property from the owner for \$1,800.00 per month. The Applicant rents a separate unit in the rental property from the Respondents for \$780.00 per month.

The Respondents submitted that the Residential Tenancy Branch does not have jurisdiction to consider the Applications. On behalf of the Respondents, V.T. submitted that the relationship between the parties is not one of landlord and tenant. Rather, she submitted that the parties are more akin to roommates. In support, V.T. referred to the following excerpt from Policy Guideline #19:

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

[Reproduced as written.]

V.T. submitted that Policy Guideline #19 supports the Respondents' assertion that the parties are mere roommates. Specifically, V.T. stated that the Respondents rent the property from the owner and rent out a space in the rental property to the Applicant, while remaining in the rental property. V.T. submitted further that the Respondents are not acting as an agent of the owner.

In reply, D.W. testified that he has exclusive use of the upper unit. He and the Respondents do not share bathroom, kitchen, or any other facilities. Further, he stated that the door to the upper unit is locked and that he has a key for it. He denies being a roommate of the Respondents.

S.W. made further submissions on behalf of the Applicant. He submitted the Respondents have treated the Applicant as such for the duration of the tenancy. S.W. repeated that the upper and lower units are separate and have been referred to as such throughout the course of this dispute.

S.W. also referred to the Respondents' use of documents and submitted they establish a landlord and tenant relationship. In support, Applicant submitted a document titled, Notice of End of Rental Relationship, dated May 29, 2018, purporting to end the tenancy. In addition, the Respondents have issued a Notice of Rent Increase, dated February 26, 2018. Finally, I note the Respondents wish to enforce the Two Month Notice. Copies of these documents were submitted with the Applicant's documentary evidence.

In addition, S.W. submitted that an implied agency relationship exists between the owner and the Respondents. He asserted that the owner is aware that the Respondents rent the upper unit to the Applicant and indirectly benefits from the Applicant's occupation of the upper unit.

Finally, S.W. submitted that the Respondents do not have authority to end a tenancy under section 49 of the *Act* as the Respondents do not have a reversionary interest in the property.

In reply to the Applicant's submissions, and despite the Respondents' desire to rely on the Two Month Notice, V.T. suggested the relationship between the Applicant and the Respondents is "black and white". She referred to the affidavit of W.J.P, made on December 24, 2017, which states:

I do not report the rent collected to [the owner] or anyone else besides my wife. I am not acting as [the owner's] agent. We have rented the entire house and have had the right to use the entire property since my wife moved in.

[Reproduced as written.]

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find that that the director does not have jurisdiction under the *Act* to consider the Applications.

There are several reasons for making this finding. First, the Respondent is not the owner of the rental unit or an agent acting on behalf of the owner. While the Respondents are collecting rent for a separate unit in the rental property, they are not doing so on behalf of the owner. Further, there is no evidence before me that the Respondents are not the heirs, assigns, personal representatives and successors in title to a person referred to above. In addition, the Respondents are tenants of the owner and continue to occupy the residential property pursuant to that agreement.

Second, I note the Applicant has very few enforceable rights under the *Act*. For example, if the owner ended the Respondents' tenancy for any reason under the *Act*, the Applicant would have no recourse and the agreement would necessarily be at an end. In addition, the Applicant has few rights to bring an application for dispute resolution against the Respondents. For example, he would be unable to make a claim to require the Respondents to make repairs to the rental property as they have no authority to do so.

However, even if I am incorrect in finding that I do not have jurisdiction to consider the Applicant's Applications under the *Act*, I find that the outcome is the same with regard to the Two Month Notice. Section 49(3) of the *Act* confirms that landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member intends in good faith

to occupy the rental unit. However, the definition of “landlord” for the purposes of section 49(3) of the *Act* is found in section 49(1) of the *Act*. It defines a landlord as an individual who has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

In this case, I find there is insufficient evidence before me to conclude that the Respondents have a reversionary interest in the rental property. That interest lies with the owner alone. Accordingly, even if a landlord and tenant relationship existed between the parties, the Respondents would not be empowered under the *Act* to issue the Two Month Notice, and the tenancy would continue.

In light of my findings above, I find that I do not have jurisdiction to hear any of the matters raised in either of the Applications.

Conclusion

I decline to hear the Applications for lack of jurisdiction.

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 4, 2018

Residential Tenancy Branch