



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: AAT, DRI, LRE, OLC, OPT, FFT

Introduction

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:26 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. on January 15, 2019. The tenant attended the hearing and gave sworn testimony. He was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided evidence that he served the Application for Dispute Resolution by registered mail. I confirmed the postal service attempted delivery to the landlord and left Notices to pick it up in December, 2018 but the landlord failed to pick it up even 10 after a final notice was left. I find the landlord was served pursuant to section 89 of the *Residential Tenancy Act* (the Act) and is deemed have received the Application pursuant to section 90 of the Act.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain orders pursuant to sections 27, 28, 30 and 31 that the landlord obey the Act and protect his peaceful enjoyment and allow entry to him and his guests
- b) To dispute an illegal rent increase pursuant to section 43,
- c) To obtain an Order of Possession for the tenant pursuant to section 54;
- d) To obtain a Monetary Order for a refund of amounts illegally collected from his room mates for rent he already paid; and
- e) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord is violating the Act by:

- (a) barring or restricting his and his guests' entry into the unit?
- (b) by illegally collecting additional rent from room mates? and
- (c) disturbing his peaceful enjoyment contrary to section 28 of the Act?

If so, is he entitled to an Order of Possession for the unit and compensation for money collected illegally?

Background and Evidence:

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. He explained the situation. He and his wife rented a home on January 15, 2018 after seeing an advertisement and viewing it. The rent was \$2400 a month and a security deposit of \$1200 was paid. The landlord knew he intended to rent some rooms to room-mates. The home has 5 rooms and an attic besides the common rooms of 2 kitchens and living area. He rented out 4 rooms. He has seasonal work and when he had the temporary layoff in winter, he went to visit his in laws in another town but he retained one room for his exclusive use plus the attic. He expects to be called back to work shortly and return to his home. He submitted a lease in evidence and said he has been consistently paying his rent of \$2400.

The landlord visited the home and decided he was going to downsize the area rented to the tenant. Then he texted the tenants' room mates and said they had to pay their rent directly to him and not to the tenant. He told them the tenant's lease was ended. When a room mate asked to see the end of tenancy agreement, the landlord texted that when the tenant moved out, he is out forever and cannot sublet; if they want to stay, they have to pay the landlord. The room mates did not believe him and he sent some intimidating texts to them demanding they pay him. He said "they" would come and see him tomorrow which the room mate considered threatening. The room mates were alarmed at the thought of losing their home and paid him. The tenant provided copies of several text messages supporting this. He said the landlord then returned his rental payment for December 2018. He said he has never had any Notice of Increase of Rent and the landlord is acting illegally in collecting excess rent from his room mates and terminating his lease. He wishes to not pursue his monetary claim at this time as he is unsure of the actual amounts paid by the room mates. He needs affirmation of his tenancy and an Order of Possession.

No documentary evidence was provided by the landlord. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

I find section 44 of the Act sets out how a tenancy may end:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

I find the weight of the evidence is that the tenant has a valid tenancy agreement which began January 15, 2018 on a month to month basis. I find rent is \$2400 a month. I find his sworn testimony credible that he has never been served any Notice to end his tenancy or to increase his rent. I find the evidence of the text messages between the landlord and the room mates indicate that the landlord is arbitrarily and illegally ending this valid tenancy. If the landlord believes that the tenant is subletting without consent or has abandoned the unit and he wants to end the tenancy, he must serve a Notice to End Tenancy pursuant to sections 44 and 47 of the Act. The tenant would then have the legal right to dispute any Notice. I find the tenant entitled to an Order of Possession as the tenancy is continued until legally ended in accordance with the Act.

I find the landlord has been illegally collecting rent from the room mates and the amount is in excess of \$2400 a month which the tenancy agreement sets out as the tenant's

obligation. The tenant said he did not know how much excess rent had been collected or whether the landlord had collected the additional security deposits he was demanding from the room mates so he is not claiming a monetary amount on this application. He hopes to settle the amounts owed with the landlord after this clarification of his continuing tenancy.

Conclusion:

I find the tenant entitled to an Order of Possession effective immediately and to recover his filing fee from the landlord. The tenant may recover his filing fee by deducting \$100 from his rent. I give the tenant leave to reapply for a monetary order for any amounts owed by the landlord after he has obtained the evidence.

I ORDER THE LANDLORD:

- a) To immediately stop demanding rent or any extra money from the room mates of the tenant;**
- b) To allow the tenant and the room mates free access to the home pursuant to section 29 of the Act; and**
- c) To cease disturbing the peaceful enjoyment of the tenant and the room mates as this is illegal pursuant to section 28 of the Act.**

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: January 15, 2019

Residential Tenancy Branch