



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPN

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to section 55(2)(a); and
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

No issues of service were raised. I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled the following:

- An order for possession pursuant to section 55(2)(a); and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed upon the following. The landlord, the tenant and SI entered into a 3-month fixed term tenancy agreement commencing February 1, 2018 for \$775.00 a month payable on the first of the month. The agreement stated that the tenancy may continue on a month-to-month basis at the end of the fixed term. The tenant testified the agreement was for only three

months as the landlord wanted a “probationary period” to see if SI was a suitable tenant as the tenant had a previous relationship with the landlord as a tenant.

At the beginning of the tenancy, the tenant and SI provided the landlord with a security deposit in the amount of \$335.00 which he still holds; the landlord has not received written authorization to retain any portion of the security deposit.

The landlord submitted a copy of a tenancy agreement as evidence. The agreement does not contain any provision for occupancy in the event one tenant vacated.

The tenant testified that the tenancy worked well for all concerned. Accordingly, SI, the tenant and the landlord agreed they would enter into a month to month tenancy agreement after the end of the fixed term tenancy. The tenant testified to many efforts to get the landlord to produce a new tenancy agreement, but this did not take place. The tenancy continued on a month to month basis

The tenant testified that there was a verbal agreement among SI, the tenant and the landlord that, if one of the tenants vacated, the other tenant could continue to live in the unit. In support of this assertion, the tenant testified that she had previously rented the unit with a different person, JC; the parties had entered into a tenancy agreement. That agreement contained a clause which stated:

“[tenant] is sharing one home with [JC]. ...If at such time [JC] moves out, [tenant] would be responsible to pay the full amount of rent at \$775 month.”

The tenant entered a copy of this previous tenancy agreement as evidence.

In support of her claim that there was an agreement between SI, the tenant and the landlord that the tenant would continue to occupy the unit after SI left, the tenant submitted a handwritten and signed statement from SI dated January 1, 2019 which stated in part as follows [emphasis added]:

*Our initial tenancy Agreement was for 3 month probationary period with the understanding that a 12 month lease would follow at the end of the term if all went well. Although [landlord] did not present a lease, we continued to rent on a month to month basis. We inquired as to when he would bring us the new lease, and he assured us that he would have something in the ‘near future’. [tenant] and I were confident in our continued tenancy as we had made numerous upgrade at our own cost to both the interior and exterior. **It was understood that if one of us moved, the remaining tenant would be responsible for the entire rent, as noted on [tenant’s] original agreement [with JC].***

The parties agreed that SI provided written notice to the landlord of her own intention to move out of the unit by email dated December 1, 2018. The notice did not refer to the tenant. The effective date of the notice was December 31, 2018, (corrected to January 31, 2019). The landlord submitted a copy of the notice as evidence.

Following the provision by SI of her notice, the tenant testified that the landlord took the position that the tenant had to move out as well. The tenant, however, asserted her understanding that she could remain in the unit as had been provided in the previous agreement with JC.

The tenant provided oral evidence supported by contemporaneous hand-written notes on her personal calendar of the landlord changing the dates on which he required her to vacate. She testified that the landlord told her he wanted his daughter to move in and was looking for a date suitable in his personal circumstances.

The landlord finally demanded that the tenant vacate by the effective date of the notice, January 31, 2019.

SI vacated the unit on December 31, 2018. The tenant refused to vacate. She has continued to pay rent and the landlord has accepted the rent "for use and occupancy only". There are no arrears of rent. The landlord acknowledged he had not returned any of the security deposit to SI after she vacated.

The tenant testified that her relationship with the landlord has become increasingly challenging. Since SI provided notice to vacate, the tenant claimed that the landlord attended many times at the unit without notice, complaining about various things and demanding that she leave. The tenant provided a written statement from a friend attesting to these unannounced visits and demands that she move out. The tenant stated she has become afraid of the landlord. Accordingly, she changed the locks to the unit, and refused to provide the landlord with a key for fear he will enter the unit without permission. She claimed the landlord has ignored her repeated requests that he provide proper notice before going to the unit.

The landlord stated there was no such term, express or implied, that the tenant could remain in the unit if SI vacated. In support of this assertion, the landlord submitted an *unsigned* typed letter dated January 22, 2019 from SI stating, "It was also understood, by myself at least that our residence hinged on me being a tenant due to [landlord's] unpleasant experience with his previous co-tenants of which Lisa Melville was a part of." The tenant stated that she does not believe SI is not the author of the letter in view of the signed letter from SI which the tenant submitted.

The landlord requested an order of possession and reimbursement of the filing fee of \$100.00.

Analysis

I have considered all the evidence of the parties. I will only refer in my decision to relevant evidence meeting the Rules of Procedure.

A tenancy agreement may have an implied term. Section 1 of the *Act* defines a “tenancy agreement” as follows [emphasis added]:

*“tenancy agreement” means an agreement, whether written or oral, **express or implied**, between a landlord and a tenant respecting possession of a rental unit, ...*

The *Residential Tenancy Act Policy Guideline # 13*, defines co-tenants. The Guideline states in part as follows:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy....

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.

The question becomes whether there is an implied term in the tenancy agreement that, if one tenant vacated, the other could continue with the tenancy. This would mean the tenants are not co-tenants within the above definition.

I have considered the parties’ evidence and documents. I find that it was reasonable of the tenant to assume that the same term in the previous lease (that she could continue the tenancy if the other occupant vacated) would apply to the subsequent agreement. I find that, if the landlord did not intend the term to apply to the current lease, he had a duty to make the change clear to the tenant, which he did not do. My finding is supported by the fact that the landlord required a “probationary period” of three months for the new arrangement involving an unknown tenant, SI. This indicates that the intention of the parties was that the previous relationship between the landlord and the tenant would continue unless SI proved to be an unsatisfactory tenant. I accept the submitted evidence of SI that there existed this implied term of the agreement that if she moved out, the tenant could continue in occupancy.

Therefore, considering the evidence in the case and the submissions of the parties, I find the tenant has met the burden of proof on a balance of probabilities that there is an implied term of the tenancy agreement that the tenancy would continue if one tenant vacated. I find this tenancy

agreement is not a co-tenancy agreement and therefore the above cited provision with respect to notice by one tenant binding the other tenant does not apply in this case. I find SI's notice has no effect on the tenancy agreement with the tenant and the landlord. I order the tenancy to continue until it is ended in accordance with the *Act*.

I therefore dismiss without leave to reapply the landlord's application for an order of possession based on SI's notice to vacate.

As the landlord has not been successful in his application, I do not grant the landlord reimbursement of the filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: February 13, 2019

Residential Tenancy Branch