



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, DRI, ERP, OLC, RP

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent; to dispute a rent increase; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* of the tenancy agreement; and for an Order requiring the Landlord to make repairs.

The Applicant stated that he has vacated the rental unit and he is, therefore, withdrawing all of his applications except the application to dispute a rent increase and the application to dispute a rent increase.

The Applicant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondent, via registered mail, although he cannot recall the date of service. The Respondent acknowledged receiving these documents in the mail, although he cannot recall when they were received.

On February 26, 2019 the Applicant submitted 3 pages of evidence to the Residential Tenancy Branch. The Applicant stated that this evidence was served to the Respondent with the Application for Dispute Resolution. The Applicant denied receipt of this evidence.

The parties were advised that the hearing would proceed; that the Applicant could speak about his evidence at the hearing; and that if, during the hearing, the Applicant deemed it necessary for me to view his documents he could request an adjournment for the purposes of re-serving his evidence. The hearing was concluded without the

Applicant requesting an adjournment and I am satisfied that this matter can be adjudicated on the basis of the testimony provided.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Has there been an unlawful rent increase?

Has the Landlord collected a security deposit that he was not entitled to collect?

Background and Evidence:

The Applicant stated that:

- he moved into the rental unit in 2010;
- he entered into a verbal tenancy agreement with a male with the initials “M.B.”;
- he agreed to pay monthly rent of \$375.00 to “M.B.”
- he rented a private room in this residential complex and shared common areas with other tenants;
- he paid a security deposit of \$175.00 to “M.B.”, although he does not recall when that was paid;
- he paid an additional security deposit of \$12.75 to “M.B.”, although he does not recall when that additional amount was paid;
- “M.B.” did not live in the residential complex;
- “M.B.” told him that due to local bylaws he was no longer able to rent a room to the Tenant;
- “M.B.” told him that he had to vacate the rental unit by January 31, 2019;
- “M.B.” did not give him written notice to end the tenancy;
- he does not recall when “M.B.” told him that the tenancy was ending;
- sometime in February of 2019 he met with the Landlord and “M.B.”;
- the Respondent agreed that the Applicant could continue to live in the rental unit after January 31, 2019, providing he paid rent to the Respondent, effective February 01, 2019;
- the Respondent asked him to pay monthly rent of \$500.00, which he did not agree to;
- he told the Respondent he wanted to continue to pay monthly rent of \$375.00;
- he has not paid rent for February or March of 2019;
- he has not paid a security deposit to the Respondent; and
- he moved out 4 or 5 days prior to March 31, 2019.

The Respondent stated that:

- he is the owner of this residential complex;
- he rented the entire the residential complex to “M.B.” for many years;
- he understands that “M.B.” was renting rooms in the residential complex to various occupants;
- “M.B.” was not acting on his behalf when he rented those rooms to other occupants;
- “M.B.” had to pay the full amount of rent regardless of who was living in the rental unit;
- he understands that the Applicant rented one of those rooms from “M.B.”;
- he understands that the Applicant shared common areas with people who also rented rooms from “M.B.”;
- he understands that “M.B.” did not live in the residential complex;
- he understands “M.B.” gave the Applicant written notice that the tenancy was ending on January 31, 2019; and
- “M.B.” ended his tenancy with the Landlord on January 31, 2019;
- sometime near the beginning of February of 2019 he met with the Applicant and “M.B.”;
- the Respondent agreed that the Applicant could continue to live in the rental unit after January 31, 2019, providing he paid rent to the Respondent, effective February 01, 2019;
- he initially asked the Applicant to pay monthly rent of \$500.00, which he did not agree to;
- he subsequently agreed that the rent would be \$375.00;
- the Applicant has not paid rent for February or March of 2019;
- he has not collected a security deposit from the Applicant; and
- on April 07, 2019 he learned that the Tenant had vacated the rental unit.

Analysis:

Section 1 of the *Residential Tenancy Act (Act)* defines a landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this

Act in relation to the rental unit;
(d) a former landlord, when the context requires this;

On the basis of the undisputed testimony I find that for many years the Respondent rented this residential complex to “M.B.”. I find that the Respondent was the landlord of “M.B.”, as that term is defined by subsection (a) of the aforementioned definition.

On the basis of the undisputed testimony I find that the tenancy agreement between the Respondent and “M.B.” ended on January 31, 2019.

On the basis of the undisputed testimony I find that for many years “M.B.” rented a room in this residential complex to the Applicant. As there is no evidence that “M.B.” was acting on behalf of the Respondent when he rented this room to the Applicant, I find that the Applicant was not a landlord to the Respondent prior to January 31, 2019. Rather, I find that “M.B.” was the landlord of the Applicant, as that term is defined by subsection (c) of the aforementioned definition, and that “M.B.” was subletting the rental unit to the Applicant.

Residential Tenancy Branch Policy Guideline #19 reads, in part:

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

This must be for a period shorter than the term of the original tenant’s tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case

of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.

The sub-tenant's contractual rights and obligations are as set out in the sublease agreement. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.

As the Applicant was a sub-tenant in this rental unit prior to January 31, 2019, I find that he was obligated to vacate the rental unit prior to January 31, 2019, which is when the tenancy between the Respondent and "M.B." ended.

On the basis of the undisputed testimony I find that effective February 01, 2019, the Applicant and the Respondent verbally agreed that the Applicant would continue living in the rental unit. At this point I find that the Respondent became the Applicant's landlord, as that term is defined by subsection (a) of the definition of a landlord.

On the basis of the undisputed testimony I find that the Respondent asked for rent of \$500.00 per month, which the Applicant did not agree to pay. On the basis of the testimony of the Applicant, who stated that he offered to pay monthly rent of \$375.00, and the testimony of the Respondent, who stated that he subsequently agreed to accept rent of \$375.00, I find that the rent for the tenancy between the Applicant and the Respondent was \$375.00 per month. I therefore find that the Applicant was required to pay monthly rent of \$375.00 to the Respondent for the duration of the tenancy.

As I have concluded that the Applicant and the Respondent did not enter into a tenancy agreement until February 01, 2019, I find that even if there had been an increase in rent between January 31, 2019 and February 01, 2019, it would not have constituted a rent increase.

On the basis of the undisputed testimony I find that the Applicant did not pay a security deposit to the Respondent. I therefore find that the Respondent did not improperly collect a security deposit.

On the basis of the undisputed testimony I find that the Applicant paid money to "M.B." for a security deposit. As "M.B." was not acting on behalf of the Respondent when he collected money for a security deposit, I find that the Respondent is not obligated to return this money to the Applicant. The Applicant retains the right to recover the security deposit from "M.B.".

Conclusion:

The Applicant has not established that the Respondent is obligated to return a security deposit to the Applicant.

The Applicant has not established that there has been a rent increase.

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: April 09, 2019

Residential Tenancy Branch