



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"), seeking an order of possession based on a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 15, 2019 ("2 Month Notice"), and to recover the cost of the filing fee.

Landlord DB, an articulated student for landlord DB ("articulated student"), the tenants and SB, who claims to be a co-landlord ("SB") were present at the teleconference hearing. I introduced myself and the parties and both parties were affirmed. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony and to make submissions to me. I have considered all of the relevant evidence and testimony provided. In addition, witness NS ("witness") attended the hearing but was not called to testify.

Preliminary and Procedural Matters

Landlord DB and SB confirmed their email addresses at the outset of the hearing. The tenants requested that their copy of the decision be sent by regular mail to them. Accordingly, the landlord DB and SB will have a copy of the decision sent by email, and the tenants will be sent their copy of the decision by regular mail.

Neither party referred to any documentary evidence served in accordance with the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") to support that the landlord and tenants are currently before the Supreme Court on matters substantive to this dispute. Therefore, I find that the *Act* applies and that I have jurisdiction under the *Act* to hear this dispute.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that there is no written tenancy agreement. The parties agreed that a verbal tenancy agreement was formed and that monthly rent of \$860.00 is due based on two rent installments of \$430.00 on the 1st and 15th day of each month.

The tenants confirmed receiving the 2 Month Notice on January 22, 2019. The effective vacancy date listed as March 31, 2019. The tenants stated that they did not dispute the 2 Month Notice for two reasons, one reason of which was that they continued to pay rent to SB and that SB assured them that she did not want them evicted and reinstated the tenancy. SB confirmed during the hearing that she verbally advised the tenants that she was reinstating the tenancy by accepting rent from the tenants and did not agree to the 2 Month Notice served on them.

The landlord denied that SB was a landlord, although did confirm on at least two occasions that SB "collects the money" and not himself. The landlord stated that he is the sole owner of the rental property, which SB did not dispute. SB testified that she is a co-landlord as she has been the one to accept the rent payments and is married to the landlord. Both SB and the tenants confirmed that rent was paid in full by the tenants for all months up to and including May 2019, as the hearing was held on May 27, 2019. The tenants continue to occupy the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I will deal with SB's assertion that she is co-landlord. There is no dispute that SB collects rent from the tenants. Accordingly, I find that SB meets the definition of landlord under section 1 of the *Act* which states:

"landlord", in relation to a rental unit, includes any of the following:

- (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;

[Emphasis added]

As a result, I find that under the *Act*, SB meets the definition of a landlord.

2 Month Notice - Although the tenants did not dispute the 2 Month Notice, I find that SB, who is also a landlord, reinstated the tenancy before the effective vacancy date of the 2 Month Notice by accepting rent for each month up to the date of the hearing. Both the tenants and landlord SB confirmed that rent has been paid in full and that SB does not wish to evict her daughter and reinstated the tenancy as a result.

Given the above, I find that the 2 Month Notice is of no force or effect due to SB reinstating the tenancy by accepting rent after the 2 Month Notice was issued and verbally reinstating the tenancy, which was supported by the testimony of the tenants. Therefore, I dismiss the landlord's application due to insufficient evidence.

As the landlord's application was not successful, I do not grant the filing fee.

The tenancy continues until ended in accordance with the *Act*.

I caution the landlord to comply with section 13(1) of the *Act* in the future, which states in part:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

[Emphasis added]

I find that even though the tenancy agreement was not in writing, the parties did confirm during the hearing that a landlord and tenant relationship existed between the parties. The parties also agreed on what the monthly rent was and the payment schedule.

Conclusion

The application of the landlord has been dismissed. The 2 Month Notice dated by the landlord on January 15, 2019 is of no force or effect as I find SB reinstated the tenancy by accepting rent after the 2 Month Notice was issued and before the effective vacancy date. I am satisfied that SB advised the tenants verbally that she was reinstating the tenancy and did not agree with the 2 Month Notice issued against her daughter by her husband.

The filing fee is not granted.

The tenancy shall continue until ended in accordance with the *Act*.

The landlord has been cautioned to comply with section 13(1) of the *Act* in the future.

This decision will be emailed to DB and SB and will be sent by regular mail to the tenants.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 28, 2019

Residential Tenancy Branch