



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR OLC FF

Introduction

This hearing dealt with the an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord acknowledged service of the application and the applicant acknowledged service of the respondent’s evidence package.

Preliminary Issue

Is there a tenancy agreement between the applicant and the respondent?

Background & Evidence

A written tenancy agreement was entered into on August 11, 2006 for a tenancy which began on September 1, 2006. The only person name as a tenant on the tenancy agreement is the applicant’s husband P.N.

The 10 Day Notice subject to this dispute is dated March 24, 2019. The 10 Day Notice named the applicant and not the tenant P.N. The applicant confirmed being served with

the 10 Day Notice on March 24, 2019. The applicant filed this application to dispute the 10 Day Notice on March 28, 2019.

The landlord testified that the applicant and the tenant are a couple and the agreement was entered into with the intention that they would both be tenants. The landlord submits that the couple shared responsibility to pay the rent and both acted as tenants over the past 12/13 years of the tenancy. The landlord testified the couple was having marital problems and in February of 2018 P.N. moved out of the unit for a brief period and then moved back in a few months later. At this time the couple had accumulated some rent arrears. The landlord testified that the applicant refused to vacate and wanted to continue the tenancy herself. The parties met on a couple of occasions to possibly sign a new tenancy agreement naming the applicant as the tenant however the talks broke down as the applicant refused to accept any responsibility over the rent arrears. The applicant continued to pay the rent and once the tenant moved back in they both resumed rent responsibilities as they had in the past.

The applicant acknowledged that a new written tenancy agreement was not entered into with her. The tenant acknowledged that they had met on a couple occasions but she was never presented with a new agreement to sign. Rather the landlord kept trying to serve her with a Notice to End Tenancy in the name of the tenant P.N. which she refused to accept. The applicant testified that since March 1, 2018 she has continued to pay the monthly rent in full. The tenant argues that she took over the tenancy on March 1, 2018 and since she has paid rent in full since this time, the rent arrears should not apply to her.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Pursuant to section 2 of the Act, the Act applies to **tenancy agreements**, rental units and other residential property.

A tenancy agreement is defined under section 1 of the Act as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, **between a landlord and a tenant** respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Based on the evidence before me and testimony of the parties, I find there is not any tenancy agreement in place between the applicant and the landlord. I find the tenancy is between the applicant's husband P.N. and the landlord. There is insufficient evidence that the formal tenancy between P.N. and the landlord ended and that a new tenancy agreement was created between the applicant and the landlord. I find the applicant is only an occupant who does not share the rights or obligations under the tenancy agreement with the tenant P.N. The applicant may have assumed the responsibility to pay the rent while the tenant briefly moved out of the rental unit but this did not create a new tenancy. Rather, the evidence supports that the landlord was only considering a new tenancy if the old rent arrears were taken care of. I find it improbable and unlikely that the landlord would create a new tenancy with the applicant without her accepting any responsibility for the rent arrears accumulated while she was an occupant of the unit.

As I find there is no tenancy agreement in place between the applicant and the landlord, I do not have jurisdiction under the Act over this matter.

The landlord would need to serve a new 10 Day Notice to the legal tenant as per the tenancy agreement which the legal tenant. The legal tenant could then either pay the rent arrears or file an application to dispute the 10 Day Notice within 5 days of being served.

This application is dismissed. As the applicant was not successful, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that I do not have jurisdiction over this matter. 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: May 13, 2019

Residential Tenancy Branch