



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPU, FFL

Introduction

This teleconference hearing was scheduled in response to an application under the *Residential Tenancy Act* (the “*Act*”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “10 Day Notice”), for monetary compensation for unpaid rent and/or utilities, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Applicant was present for the teleconference hearing while no one called in for the Respondent during the approximately 16 minutes that the phone line remained open. The Applicant was affirmed to be truthful in her testimony and confirmed that the Respondent was served with the Notice of Dispute Resolution Proceeding package and a copy of her evidence by registered mail. The registered mail receipt was submitted into evidence and is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the Respondent signed and accepted the package on April 8, 2019. As such, I find that the Respondent was duly served in accordance with the *Act*.

Issues to be Decided

Is the Applicant entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities?

Is the Applicant entitled to a Monetary Order for unpaid rent and/or utilities?

Should the Applicant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Applicant provided testimony that the tenancy began with a family member as the tenant. The family member moved out and arranged for the Respondent to move into the rental unit without advising the Applicant who is the owner of the property. The Applicant stated that her family member moved out approximately two years ago and the Respondent has been residing in the rental unit since that time. The Applicant stated that her family member has another place to live now and does not have plans to move back to the rental unit.

The Applicant stated that there is no written tenancy agreement between herself and the Respondent. The Respondent would pay monthly rent to the family member who would then pay the Applicant.

The Applicant stated that she served the Respondent with a 10 Day Notice by registered mail on March 14, 2019. She stated that when she stopped receiving the monthly rent payments from her family member, her family member told her that the Respondent was no longer paying.

The Applicant is seeking an Order of Possession, as well as claiming unpaid rent and utilities. She stated that there is no written agreement regarding utility payments from the Respondent. She noted that the utilities were in her family member's name but were recently changed to the Applicant's name. The Applicant stated that she has received no money towards utilities from either her family member or the Respondent in the past few months.

Analysis

While a tenancy agreement may be in writing or may be established through a verbal agreement, I find in this matter that no tenancy was established between the Applicant and the Respondent.

I accept the testimony of the Application that a verbal tenancy agreement was established initially with her family member and that the family member moved out. I also accept that the Respondent moved into the rental unit without permission from the Applicant.

Section 34(1) of the *Act* states that a tenant must not assign a tenancy agreement or sublet a rental unit without the permission of the Landlord. I refer to *Residential Tenancy Policy Guideline 19: Assignment and Sublet* which provides further information on assignment and subletting. As a sublet is a situation where the original tenant moves out temporarily and a new tenant moves in with the original tenancy agreement still in place, I do not find this situation to be a sublet arrangement.

Instead, as the Applicant provided testimony that her family member does not have intentions to move back into the rental unit, I find that the family member assigned the tenancy agreement to the Respondent, without the permission of the Applicant/Landlord.

Policy Guideline 19 further states the following:

It is possible that the original tenant may be liable to the landlord under the original agreement. For example:

- *the assignment to the new tenant was made without the landlord's consent; or*
- *the assignment agreement doesn't expressly address the assignment of the original tenant's obligations to the new tenant in order to ensure the original tenant does not remain liable under the original tenancy agreement.*

As the Applicant testified that she did not provide permission for the tenancy to be assigned and there was no assignment agreement or new tenancy agreement drafted, I find that no tenancy exists between the Applicant and Respondent.

I also find that no new tenancy agreement was established with the Respondent as no agreement was discussed (verbally or in writing), and rent continued to be paid from the family member to the Applicant, with no interaction between the Respondent and Applicant. Instead, based on the testimony of the Applicant, I find that the original tenant is liable under the original agreement and the Applicant may find cause to serve the original tenant with a 10 Day Notice if rent is not paid as due.

Therefore, as I am not satisfied that a tenancy has been established between the Applicant and Respondent, I dismiss this application without leave to reapply.

Conclusion

The Application for Dispute Resolution 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: May 17, 2019

Residential Tenancy Branch