



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the teleconference hearing along with an agent (the “Tenant”). Three family members of the Landlord were also present representing the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence with the exception of one rent payment receipt. The Tenant confirmed receipt of the Landlord’s evidence package. Neither party brought up any issues regarding service during the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Should the Landlord be ordered to comply with the *Act*, *Regulation* and/or tenancy agreement?

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

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to some of the details of the tenancy. The tenancy started on October 1, 2015. The initial agreement was for the Tenant to rent a room in the Landlord's home with shared kitchen and common space with the Landlord. This was stated in the tenancy agreement submitted into evidence. The Landlord stated that monthly rent is \$630.00, and the Tenant paid a security deposit of \$275.00 at the start of the tenancy.

The parties agreed that in 2017 the Landlord, who is the sole owner of the home, was moved into a care facility and has not resided on the residential property since that time. The Tenant submitted into evidence an email from the Landlord's family dated October 19, 2017 in which they notified the Tenant that the Landlord/owner moved into a care facility.

The Landlord's family stated that they have power of attorney for their father and submitted a copy of power of attorney documents into evidence. They stated that they come and go to the home to provide repairs and maintenance as well as to collect rent. They also noted that they have some belongings stored in the home.

The Tenant submitted that they have asked repeatedly for a new tenancy agreement since the arrangement has changed and is no longer a shared space with the property owner, as stated in the original tenancy agreement. As such, the Tenant is requesting that the Landlord be ordered to comply with the *Act* such as providing proper notice to enter the property and only increasing rent in accordance with the *Act*.

The Tenant also spoke about an issue that occurred in the bathroom of the room she was renting and due to required repairs, she was asked to move to a smaller bedroom with no change in monthly rent. The Tenant stated that she never agreed to a rent increase to \$630.00 and also noted that she is not provided receipts for rent paid in cash. When the Tenant was moved a second time to a slightly larger room she again asked for a new tenancy agreement and stated that this was denied from the Landlord's family members. The Tenant testified as to further issues with the tenancy that she believes will be resolved if the Landlord follows the *Act* and *Regulation*.

The Landlord stated that they text the Tenant when they are coming to the residential property to collect rent and that they would provide notice if they needed to enter the Tenant's bedroom. They provided testimony regarding what happened with the flooding issue in the bathroom of the Tenant's room. They stated that the Tenant was argumentative and only paid a reduced rent amount while the repairs were being completed, despite no conversation about doing so.

The Landlord further stated that the Tenant has not asked for a new tenancy agreement and that she only mentioned wanting rent receipts one time. The Landlord stated their position that the *Act* does not apply since this is a shared accommodation with the home owner as indicated on the tenancy agreement. The Landlord also noted that they served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") in June 2019. The Tenant submitted a copy of the 10 Day Notice into evidence.

Analysis

Regarding whether the *Act* applies to this matter, I refer to Section 4(c) of the *Act* which states that the *Act* does not apply to:

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the **owner** of that accommodation

[Emphasis added.]

Based on the testimony of both parties as well as the tenancy agreement submitted into evidence, I find that this was the situation when the agreement was signed. As the Tenant was sharing the kitchen with the property owner, I find that at that time the *Act* did not apply.

However, the parties agreed that the sole owner of the property moved out of the home in October 2017 and has not resided in the home since that time. While the home owner's family has power of attorney, I do not find that this qualifies them as owners of the home. Instead, I find that they are acting as agents for the Landlord and meets the definition of Landlord under Section 1(a) of the *Act* as follows:

- (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

Therefore, I find that Section 4(a) of the *Act* no longer applies as the property owner does not reside in the home. As such, I find that a new tenancy arrangement was entered into following the owner moving out of the residential property, despite no new tenancy agreement being signed. I note Section 12 of the *Act* which states the following:

- 12 The standard terms are terms of every tenancy agreement
 - (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
 - (b) whether or not the tenancy agreement is in writing.

As such, I find that when the tenancy arrangements changed, the parties entered into a new verbal tenancy agreement with new terms. This was established and enforced through the collection of rent and other actions regarding the tenancy taken on by the Landlord's family members who were acting as agents for the Landlord. I also note that despite their claim that the *Act* does not apply to this matter, the Landlord has served the Tenant with a 10 Day Notice under Section 46 of the *Act*.

Accordingly, I do not find any other reason under Section 4 of the *Act* as to why the *Act* would not apply to this matter and therefore find that the *Act* and *Regulation* apply to this tenancy. I do not find it necessary to make any specific orders but remind the parties that since the *Act* applies to this tenancy they both have rights and responsibilities to be followed under the *Act*. I note that the Landlord may not claim an exclusion from the *Act* when that exclusion no longer applies, and pursuant to Section 5 of the *Act*, the parties are not able to contract outside of the *Act*.

This includes requirements regarding the Landlord's right to enter the property as stated under Section 29 of the *Act*, a requirement to provide a receipt for rent paid in cash as stated under Section 26(2) of the *Act*, and obligations for both parties to repair and maintain the premises under Section 32 of the *Act*. I also note that as the *Act* applies to this matter, the tenancy may only be ended in a manner as stated under Section 44 of the *Act*.

As the Tenant was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant may deduct \$100.00 from the next monthly rent payment as satisfaction of the amount owed.

Conclusion

This tenancy falls under the jurisdiction of the *Act* and therefore the Landlord is ordered to comply with the *Act* and *Regulation*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment as recovery of the filing fee.

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: July 23, 2019

Residential Tenancy Branch