



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, AS, CNC, FFT, LAT, LRE, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 15, 2019 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated August 10, 2019 (the “Notice”);
- For an order that the Landlord allow access to the rental unit for the Tenant and/or guests;
- To be allowed to assign or sublet the rental unit;
- For authorization to change the locks to the rental unit;
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agents for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant confirmed his full legal name which is reflected in the style of cause.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I told the Tenant I would consider the dispute of the Notice and request for reimbursement for the filing fee. The Tenant confirmed the request for an order that the Landlord allow access to the rental unit for the Tenant and/or guests is no longer an issue. The remaining requests are dismissed with leave to re-apply.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Agent J.G. confirmed receipt of the hearing package and Tenant's evidence, except for pages 14 to 22 of the evidence package.

The Tenant testified that he served all of his evidence on the Landlord. The Tenant provided the tracking number for this; however, this does not assist in determining what was in the package as Agent J.G. confirmed receipt of the hearing package and most of the evidence. There is no other evidence submitted to support the Tenant's testimony about what the package contained.

I am not satisfied the package contained pages 14 to 22 of the evidence package submitted to me. I am not satisfied the Tenant complied with the Rules in relation to service of these pages. I exclude these pages as I find it would be prejudicial to the Landlord to consider them when I am not satisfied they were served and they are not documents the Landlord would have been aware of regardless of service.

The Tenant testified that he did not receive the Landlord's evidence. The only evidence submitted by the Landlord is the tenancy agreement between the parties and a letter sent to the Tenant by Agent J.G. The Tenant took no issue with the admissibility of these given the nature of the documents.

A preliminary issue arose in relation to J.R. who was named on the Application as a Tenant. J.R. did not appear at the hearing. Nobody appeared at the hearing for J.R. The Tenant said he did not have authority to appear for J.R.

I heard the parties on whether J.R. is a tenant in relation to this matter.

The Tenant testified as follows. The Landlord is his father. J.R. is his tenant and not a tenant of the Landlord. There is no tenancy agreement between J.R. and the Landlord. The rental unit address is a house with three separate suites. He lives in one of the suites. He rented the other two suites to J.R. He and J.R. entered into a written tenancy agreement in relation to the two suites with a term of July 01, 2019 to July 01, 2020. J.R. pays rent to him. He pays rent to the Landlord. J.R. is a sub-tenant of his. He has sublet the suites to J.R.

The Tenant further testified as follows. He did not have written consent to sublet the suites but had verbal consent from the Landlord. He has Power of Attorney for the Landlord. He acts as agent for the Landlord in renting out the suites.

Agent J.G. testified as follows. The written tenancy agreement in this matter is between the Landlord and Tenant. It does not mention J.R. The Tenant should have complied with term 9 in the tenancy agreement about assigning or subletting. There is no evidence the Tenant had verbal consent from the Landlord to sublet. The Tenant pays rent to the Landlord. J.R. is a sub-tenant and the suites have been sublet to him.

The written tenancy agreement was submitted as evidence. It is between the Landlord and Tenant in relation to the rental unit address. Term 9 of the agreement requires the Tenant to obtain the written consent of the Landlord to assign or sublet the rental unit.

The Tenant submitted letters from neighbours. These do not assist with the issue of whether J.R. is a tenant as that term is used in the *Residential Tenancy Act* (the “Act”) as they do not address this issue.

The Tenant submitted a letter from legal counsel for a company which I understand to be related to J.R. I do not find that this adds relevant information to that provided by the Tenant and noted above.

I am not satisfied J.R. is a tenant in relation to this matter. This matter relates to the tenancy agreement between the Landlord and Tenant for the rental unit address. I do not find that J.R. is a party to this agreement for the following reasons. He is not named on the tenancy agreement. The Tenant acknowledged that J.R. is his tenant and not a tenant of the Landlord. The Tenant acknowledged there is no tenancy agreement between J.R. and the Landlord. J.R. does not pay rent to the Landlord. The Tenant characterized J.R. as a sub-tenant who has sublet the suites from him. Agent J.G. also took the position that J.R. is a sub-tenant who has sublet the suites from the Tenant.

Based on the testimony of the Tenant, I find the Tenant rented the house from the Landlord and then entered into a separate tenancy agreement with J.R. in relation to two of the three suites in the house. The Landlord’s position is that the Tenant was not acting as his agent when he did this. There is insufficient evidence before me to support the Tenant’s testimony that he was acting as agent for the Landlord when he entered into the tenancy agreement with J.R. The Tenant said he has Power of Attorney for the Landlord; however, no documentary evidence of this was submitted.

Given the conflicting positions, and lack of compelling evidence to support the Tenant's position, I am not satisfied he was acting as agent for the Landlord when he entered into the tenancy agreement with J.R.

Term 9 of the tenancy agreement required the Tenant to obtain the written consent of the Landlord prior to assigning or subletting the rental unit. The Tenant acknowledged he did not obtain written consent from the Landlord prior to subletting the suites. I find the assignment or sublet of the suites is not a legal assignment or sublet.

Given the above, J.R. is not a tenant in relation to this matter. Therefore, I have removed J.R. from the style of cause.

I also note the following from a prior decision between the Landlord and Tenant on File Number 1 as noted on the front page of this decision:

At the outset of the hearing the parties agreed that the second named applicant is a corporate entity that has no landlord-tenant relationship with the respondent. The tenant testified that the second applicant is a corporate entity with which they have a separate contractual relationship but confirmed that they do not represent the second applicant nor are they authorized to speak on their behalf. As the second named applicant has no relationship with the respondent I find it appropriate to remove them as a party from this proceeding.

I understand from the materials before me that the corporate entity is the company related to J.R.

Given comments of the Tenant at the outset of the hearing about ending the tenancy, I raised the possibility of settlement pursuant to section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear the matter and make a final and binding decision in the matter. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear the matter and make a final and binding decision in the matter. If they did come to an agreement, I would write out the agreement in my written decision and make any necessary orders. The written decision would become a final and legally binding agreement and neither party could change their mind about it later.

The parties did not have questions about the above and agreed to discuss settlement.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession and Monetary Order. I confirmed with the parties that all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure.

Settlement Agreement

The Landlord and Tenant agree as follows:

1. The Notice is cancelled.
2. The tenancy will end and the Tenant will vacate the rental unit no later than 1:00 p.m. on September 30, 2019.
3. The Landlord will reimburse the Tenant for the \$100.00 filing fee.
4. All rights and obligations of the parties will continue until the tenancy ends at 1:00 p.m. on September 30, 2019.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlord is issued an Order of Possession for the rental unit which is effective at 1:00 p.m. on September 30, 2019. If the Tenant fails to vacate the rental unit in accordance with the settlement agreement set out above, the Landlord must serve the Tenant with this Order. If the Tenant fails to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court as an order of that Court.

The Tenant is issued a Monetary Order in the amount of \$100.00. If the Landlord fails to reimburse the Tenant for the \$100.00 filing fee, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I note that the tenancy between the Landlord and Tenant in relation to the house is ending and the Order of Possession will apply to all occupants of the house.

The parties agreed at the hearing that all dealings between the Landlord and Tenant in relation to this tenancy will occur between the Tenant and Agent Company as noted on the front page of this decision. The Agent Company acts as agent for the Landlord in relation to this tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 13, 2019

Residential Tenancy Branch