



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Caledonia Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT, MT

Introduction

The Applicant filed an Application for Dispute Resolution on November 12, 2019 seeking more time to apply to dispute a Notice to End Tenancy and an order to cancel the One Month Notice to End Tenancy for cause (the "One Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on February 6, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The Applicant and Respondent attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The Respondent confirmed receipt of the Notice of Dispute Resolution on December 20, 2019, delivered by the Applicant in person. This was a 6-page package including the application form and copy of the One Month Notice.

Issue(s) to be Decided

Is the Applicant entitled to an order that the Respondent cancel or withdraw the One Month Notice?

If the Applicant is unsuccessful in this Application, is the Respondent entitled to an Order of Possession of the rental unit?

Is the Applicant entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

In the hearing the Respondent spoke to the standing tenancy agreement. There was a different property manager in place at the time of the signing of the tenancy agreement of April 22, 2014. As of November 2018, a different property manager began care for the building, with the Respondent in this hearing being an agent of this company. The tenant who signed the tenancy agreement (the “signed tenant”) is the named party on the One Month Notice. This signed tenant was not present at this hearing. At the time of signing the tenancy agreement, the rent amount was set at \$725.00 at that time, payable on the first of each month. The security deposit agreed to was \$325.00.

The parties to this hearing confirm the tenancy agreement lists a different tenant name than the Applicant in this hearing. In the conference call, I clarified the name of the Applicant and his relation to the signed tenant. In 2018, the Applicant moved into the rental unit and contributed to the monthly rent.

The One Month Notice is dated November 27, 2019, with the effective date for the signed tenant to move out being January 1, 2020. On a separate copy of the One Month Notice in the evidence, the effective date to move out is edited to show December 31, 2019.

The Respondent indicated the following reasons to end tenancy, on page 2 of the One Month Notice:

- ☐ Tenant or a person permitted on the property by the tenant has:
 - ☐ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☐ put the landlord's property at significant risk.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - ☐ damage the landlord's property.
 - ☐ adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
 - ☐ jeopardize a lawful right or interest of another occupant or the landlord.
- ☐ Tenant has not done required repairs or damage to the unit/site.
- ☐ Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The Respondent completed the 'Detail of Causes' space on the One Month Notice:

RCMP has been in contact with our office with respect to a search warrant that was issued, with respect to drug trafficking, tampering with cameras, letting people live in his suite without permission of landlord.

In the One Month Notice, the Respondent provided that they affixed this document on the rent unit door on November 27, 2019. In the hearing, the Respondent stated that he knows the Applicant accepted this on the same date, with the statement that video security footage exists that shows the signed tenant removing that from the rental unit door. The Respondent also stated that this evidence is bolstered by the Applicant completing an Application for Dispute Resolution, and therein indicating the same date of service on the door.

In the hearing, the Applicant reviewed the history of their co-habiting the rental unit with the signed tenant, starting to pay one-half the monthly rent directly to the named tenant in October 2019 through to November 2019. By December 2019 and January 2020, the Applicant paid the full month rent to the rental agency.

The Applicant stated that the signed tenant moved out in October and specified the 20th as the date the signed tenant moved out, using a truck to remove belongings from the rental unit. The Applicant testified that December was the last time they saw the signed tenant, and January 2020 was the last time they spoke on the telephone. At that time, the signed tenant confirmed that they moved out of the rental unit.

The Applicant also stated that he met the Respondent on October 22, 2019. This was at the apartment, when introductions were made upon the Respondent's visit. The Respondent visited the unit due to communication with the police and became aware of the Applicant because of existing video footage taken within the building.

The Respondent spoke to the presence of the Applicant in the rental unit, with reference to the history of the signed tenant's interactions with police and a number of guests entering the building, staying in the building premises where not permitted. This includes the security camera in the hallway frequently being covered up preventing viewing of video footage.

The Respondent stated that there is no other agreement in place beside the tenancy agreement signed April 22, 2014. There was a discussion with the Applicant to complete another agreement, with the first step being the completion of an application to rent. According to the Respondent, the most information they had was that the rent was coming from the signed tenant. This was until January 31, 2020 when they learned that the Applicant was living in the rental unit, alone.

On this subject, the Applicant maintained that the Respondent "never asked for one [i.e., a tenancy agreement]". The Applicant stated he paid the rent for the month of January. They went to the rental agency office and obtained the application to rent but did not complete and submit that application because of this present dispute.

Analysis

The Residential Policy Guideline 13 'Rights and Responsibilities of Co-tenants' gives a statement of the policy intent of the legislation. It provides, on the definition of 'tenant': this is a person who has entered a tenancy agreement to rent a rental unit. If there is no rental agreement, the person who made an oral agreement with the landlord to rent the rental unit and pay the rent is the tenant.

The Guideline also sets forth considerations for an 'occupant'. In the situation where a tenant allows a person who is not a tenant move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement.

Based on the evidence and testimony before me, I dismiss the Application for Dispute Resolution for the following reasons:

- At the time the One Month Notice was issued, there was no tenancy agreement between the Applicant and the Respondent. From the statements both parties made in the hearing, it is fact that there is no agreement in place, neither written nor verbal that establishes a tenancy between the Applicant and Respondent; therefore, the Applicant was an 'occupant' in the rental unit, pursuant to Policy Guideline 13.
- The Application for Dispute Resolution – completed by the Applicant – named the signed tenant, who was the tenant in the original tenancy agreement. The Application document was not signed by the signed tenant, and there is no evidence that the Applicant – as the occupant -- had the authority to act on the signed tenant's behalf in this matter.
- The Respondent -- the landlord who completed the One Month Notice -- named the signed tenant in the One Month Notice. Despite the evidence that shows the Respondent may have known of the Applicant's presence within the unit, there is nothing to indicate that the Respondent entered into a tenancy agreement, written or verbal, to change the 'occupant' status to that of 'tenant', prior to the issuance of the One Month Notice. There is no extant agreement in place to show that the Applicant is even now a party to the original tenancy agreement.
- The testimony of the Applicant – verified by the Respondent – is that the signed tenant moved out of the unit on October 20, 2019. As the only tenant named in the tenancy agreement still responsible for the tenancy and the only tenant named in the One Month Notice, I find there is no reason or evidence that the tenant intended to dispute this One Month Notice.

Based on the above, I find the Applicant is not a party to this tenancy and he had no authority under the *Act* to submit this Application.

Section 55(1) of the *Act* states that if a *tenant* applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of

section 52 of the *Act*. In this hearing I find the Applicant is not a party to the tenancy agreement, and not a 'tenant'; therefore, the provision of section 55(1) does not apply and I do not grant the Respondent an order of possession.

While there were submissions from both parties regarding the payment of rent, I make no findings relating to any subsequent agreements made between the Applicant and Respondent that may result in a new tenancy being formed.

Conclusion

For the reasons above, I dismiss this Application for Dispute Resolution in its entirety, 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 *Act*.

Dated: February 19, 2020

Residential Tenancy Branch