



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUGH AND MCKINNON REAL ESTATE, CANADIAN
TENANT INSPECTION SERVICES LTD. dba CTI SERVICES and CITY OF
SURREY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, OLC, MNDCT, OL, FFL

Introduction

This hearing scheduled on January 17, 2020 upon receipt of a Tenant's Application for Dispute Resolution whereby the applicant TS seeks orders for the property management company to comply with the Act, regulations or tenancy agreement; and, provide services or facilities required by law. TS and agents for the property management company appeared for the hearing and I confirmed the Tenant's Application for Dispute Resolution was sent to the property management company by registered mail on January 20, 2020 and received on January 21, 2020.

On February 28, 2020 the owner of the property, which is the City where the subject property is located, and an authorized agent contracted to act on behalf of the property management company, filed a Landlord's Application for Dispute Resolution indicating an "other" issue not otherwise provided on a Landlord's Application for Dispute Resolution. In the details of dispute, the applicants indicate TS is not a tenant; that the tenant has moved off the property but TS refuses to leave the property. A delegated authority for the Director of the Residential Tenancy Branch joined the two applications together, set to be heard at the same time by me. I confirmed that the Landlord's Application for Dispute Resolution and supporting documents were served upon TS, in person, on March 2, 2020.

Also on March 2, 2020, TS amended her Application for Dispute Resolution against the property management company to seek a monetary order in the amount of \$34,340.00. I confirmed that the Amendment and evidence were served upon the property management company in person on March 2, 2020.

Preliminary Issue – remedies sought

TS clarified that she seeks to have the owner, and owner's agents, recognize her as a tenant of the property and comply with the Residential Tenancy Act ("the Act") by providing services or facilities required by law and to stop trying to unlawfully evict her by way of an Order of Possession issued against a former tenant, referred to by initials LVR. TS also seeks compensation for what she characterized as a traumatic event when the bailiff arrived and started to evict her from the property on February 25, 2020.

The owner, or its agents, seek to have TS found to be an occupant under a former tenancy agreement with previous tenant but not their tenant; but, that I provide them with an Order of Possession issued against TS.

As there is a dispute as to whether TS has standing as a tenant by way of a tenancy agreement with the owner, or its agents, that matter must be determined first. I informed the parties that if I were to find TS is not a tenant of the owner or its agents, as submitted by the owner and its agents, then I cannot provide them with an Order of Possession against TS. If TS is an occupant or sub-tenant, the landlord's recourse is to pursue enforcement of an Order of Possession issued against their tenant as an Order of Possession issued against a tenant requires all other occupants of the rental unit to vacate the property.

The parties submitted that the landlord has already obtained Order of Possession and Writ of Possession against the former tenant, LVR, for the entire property but that the Writ of Possession was set aside by Justice Ball in the Supreme Court when TS went to the court to stop the execution of the Writ. According to the parties, the Justice Ball set aside the Writ of Possession as there was evidence that TS had standing as a tenant under the Act by the Residential Tenancy Branch in an earlier dispute resolution proceeding initiated by TS against LVR. TS had filed a Tenant's Application for Dispute Resolution in October 2019 against LVR who was named as her landlord (file number referred to on the cover page of this decision).

In light of the above, I proceed to determine the following issues:

Issues to be decided:

1. Does TS have standing as a tenant of the subject property?
2. Do the parties named in this matter have a tenancy agreement with each other?

Background and Evidence

Submissions of TS

TS submitted that she rented a separate self-contained basement suite from an individual identified by initials LVR starting July 1, 2019. LVR was occupying the upper living unit in the house on the property. TS stated that she and LVR were acquainted with each other before the formation of the tenancy. According to TS, she and LVR agreed upon the monthly rent of \$925.00, including utilities LVR had signed a Shelter Information document indicating she was the landlord and TS submitted that document to Income Assistance. TS testified that she received shelter allowance from Income Assistance and she would then in turn pay rent, in cash, LVR. The last month TS paid rent was for October 2019.

TS described the basement suite as having a bedroom, and its own bathroom and kitchen, complete with sink, fridge and full sized range that was separate from the kitchen and bathroom upstairs.

TS acknowledged that she was aware that LVR was a tenant of the property and that on or about October 20, 2019 LVR entered into a Mutual Agreement to End Tenancy with the landlord with an effective date of October 31, 2019. LVR proceeded to move out of the property and terminated the utilities to the property at the end of October 2019.

In October 2019 TS initiated an Application for Dispute Resolution against LVR. In filing that Application for Dispute Resolution, TS wrote that LVR threatened to have the "property enforcer" remove TS from the property even though TS had not received an eviction notice. A hearing was held on December 10, 2019 and on that date TS appeared but there was no appearance on part of LVR. According to the Arbitrator's decision, TS submitted that she had to put the electricity and gas accounts in her name so that she may continue to receive these services. The Arbitrator ordered LVR to put the electricity and gas accounts back in LVR's name; authorized TS to make deductions from rent payable to LVR for the periods of time before the utility accounts are returned to LVR's name; and, cautioned LVR in the written decision that LVR must end the

tenancy in a manner that complies with the Act. The Arbitrator's decision makes no mention of LVR being a tenant of the property or renting a basement suite as constituting a sub-let. Rather, TS had submitted as evidence to the Arbitrator the Shelter Information form where the "landlord" is identified as LVR.

In filing the Application for Dispute Resolution that is before me, TS identified her landlord as being a property management company but not LVR. I asked TS to explain the reason for the change in identity of the landlord in making her Application for Dispute Resolution in January 2020 and her reason for determining the property management company is now her landlord.

TS acknowledged that she was aware that LVR was tenant of the property and that she had entered into an agreement with LVR; however, TS believes she is a tenant of the property management company because when LVR moved out LVR told TS that she would have to deal with the property managers going forward.

TS was also of the position that the property manager, or the owner, or its agents ought to accept her as a tenant because she is willing to pay the rent for the basement suite and the property manager had entered into a tenancy agreement with LVR even though LVR began residing on the property under a previous tenant's tenancy agreement.

TS acknowledged she has not paid rent since October 2019; however, she has been willing to continue to pay \$925.00 per month but the property manager, or the owner, or its agents have not accepted rent from her.

TS submitted that she did enter into an oral tenancy agreement with the agents for the owner or property manager in January 2020 but that the agent did not follow through and meet with her to accept her rent payment. TS described how she met with the agents at the property on January 9, 2020 and they agreed that she would continue to rent the basement suite for \$925.00 per month. In support of entering into a verbal tenancy agreement with the agent for the owner or property management company, TS pointed text messages she exchanged with the agent identified by initials JG whereby she attempts to set up an appointment to pay rent on January 9, 2020 and JG initially responds that he has to reschedule their appointment and then he responds on January 10, 2020 that they will not be accepting rent from her.

TS also pointed out that the landlord is trying to evict her based on an Order of Possession and Writ of Possession issued against LVR but that she is a tenant and she

has not received an eviction notice and the landlord has not served her with an Order of Possession or Writ of Possession.

Submissions of owner, property management company and its agents

The representative for the property management company, referred to by initials BP, testified that the property management company entered into a written tenancy agreement with a third party starting July 1, 2017 and LVR began occupying the property under that tenancy agreement. In the summer of 2019 the property manager learned that the third party moved out of the property but LVR had remained and LVR was renting a basement bedroom to TS. The property management company and LVR entered into a new a tenancy agreement starting September 1, 2019. BP testified that LVR was prohibited from sub-letting the property under their tenancy agreement, but the property manager did not consider TS to be a sub-tenant since the house rented to LVR was a single family dwelling that did not have a self-contained basement suite and the property manager was informed that TS was only renting a bedroom in the basement.

The property manager's agent referred to by initials JG testified that he has been inspecting the property for years and the property did not have a self-contained basement suite with its own kitchen prior to July 1, 2019; however, in February 2020 when the bailiff was executing the Writ of Possession it was observed that the wiring had been altered so that the 220 wiring had been re-routed to accommodate a stove downstairs when that did not exist before.

JG stated that since October 2019, when preparations were being made to end the tenancy with LVR, TS was informed that she would have to vacate the property along with LVR and a tenancy would not be entered into with TS.

TS did not vacate and the landlord proceeded to seek an Order of Possession against LVR. The landlord's agent personally served LVR with a 10 Day Notice to End Tenancy for Unpaid Rent on November 18, 2019 in the parking lot of a restaurant. LVR did not pay the rent or dispute the 10 Day Notice. The landlord then applied for an Order of Possession against LVR. LVR was personally served with notification of the landlord's application for an Order of Possession on December 5, 2019 and served with notification of a hearing set to hear the matter by registered mail sent to LVR on January 6, 2020 and the registered mail was accepted and signed for by LVR. At the February 7, 2020 hearing set to deal with the landlords application for an Order of Possession, LVR did not appear. The Arbitrator presiding over the hearing of February 7, 2020 found the tenancy with LVR had ended based on the Mutual Agreement to End

Tenancy and unpaid rent and issued an Order of Possession against LVR “and any occupants” of the subject property.

JG submitted that LVR was served with the Order of Possession, in person, on February 19, 2020. Since the property was still not vacated by TS, the landlord then applied for and obtained a Writ of Possession against LVR on February 24, 2020. The bailiff started to execute the Writ in the morning of February 25, 2020. TS went to the Supreme Court later that same day in an attempt to stop the Writ from being executed. According to both parties, Justice Ball noted that TS had been accepted as a tenant by the Residential Tenancy Branch in the proceeding TS initiated against LVR and set aside the Writ. JG testified that he then instructed the bailiff to cease removing TS’s possessions from the property. The landlord then filed its Application for Dispute Resolution that is before me in the few days that followed. All parties were in agreement that TS remains at the property pending the outcome of this decision.

JG and an agent for owner acknowledged that they did meet at the property on January 8, 2020 and there was discussion with TS about renting the basement suite but that they did not enter into an agreement with TS.

JG stated that he had considered accepting money from TS for “use and occupancy” when he initially responded to TS’s text message about paying rent but upon further discussion with the owner or the owner’s agents it was decided that they would not to take or accept any monies from her.

Analysis

Pursuant to section 2 of the Act applies to landlord(s) and tenant(s) who have a tenancy agreement for a residential rental unit. My authority to resolve dispute and issue any applicable order is provided by the Director under the Act. Accordingly, to accept jurisdiction to resolve a dispute I must be satisfied that the parties named in the Application for Dispute Resolution are a landlord and a tenant who have entered into a tenancy agreement.

It was undisputed that LVR was originally an occupant of the subject property and then became a tenant of the property and it was LVR that permitted TS occupancy of the property. I was provided no evidence to suggest that LVR was acting as an agent for the owner or the property management company authorized to act on behalf of the owner. Accordingly, I find that if LVR and TS entered into a tenancy agreement it would be sub-let or sub-tenancy agreement at best; however, there is question as to whether a

true sub-tenancy formed because there is conflicting evidence that the subject property rented to LVR included a separate self-contained basement suite.

I note that TS testified that she was provided a full sized range in a fully functional kitchen as part of the separate basement suite rented to her by LVR; however, I note that when TS made her Application for Dispute Resolution against LVR she provided photographs showing there was only a two burner hot plate, toaster oven and microwave stacked on a small counter next to a sink but no full sized range. Whereas, the parties provided consistent testimony that when the bailiff attended the property in February 2020 a full sized range was in the basement. As such, I find I prefer, on a balance of probabilities, the owner's agents' submissions that the property rented to LVR was a single family dwelling and it has been altered unlawfully more recently in an attempt to create a second kitchen in the basement.

Where a tenant sub-lets a property, the original tenant becomes the "landlord" to the sub-tenant and the sub-tenant may make an Application for Dispute Resolution against the original tenant, as their landlord, through the Residential Tenancy Branch, which TS did in October 2019 in filing an Application for Dispute Resolution against LVR. LVR did not appear for the hearing scheduled in response to TS's application made in October 2019 and the Arbitrator appears to have accepted on its face, without any opposition, that TS and LVR had a tenancy agreement. Considering LVR was the tenant for the entire property and resided in the rental unit while TS was residing there with a make-shift cooking area, I find it doubtful that a true sub-tenancy formed. Nevertheless, I find it unnecessary to make a conclusive finding as to whether a true sub-tenancy formed between LVR and TS for purposes of this proceeding, as explained below.

Whether LVR and TS had a sub-tenancy agreement or a shared living arrangement, it remains that TS's right to occupy the property ceases when the tenancy of LVR ends. When a lease ends, the sub-lease ends and the sub-tenant must vacate the property. Similarly, when a tenancy ends, the occupants sharing the rental unit under a shared living arrangement or roommate arrangement must vacate along with the tenant. Therefore, I find TS's right to occupy the rental unit ceased when the tenancy of LVR ended.

Where a property is not vacated by all occupants, tenants, or sub-tenants, at the end of a tenancy, the landlord's remedy is to seek an Order of Possession against its tenant(s) and the Order of Possession will require the tenant(s) and any other occupants of the subject rental unit to vacate the property. The landlord in this case did obtain an Order of Possession against its tenant LVR requiring LVR and all other occupants of the

property to vacate and that is the correct course of action. At issue for me to determine is whether TS and the owner, or its agents, formed their own tenancy agreement with each other which would require the landlord to issue a Notice to End Tenancy to TS and obtain an Order of Possession against TS.

TS argued that she has a tenancy agreement with the landlord because LVR told her to deal with the property managers when LVR was vacating the property; however, I was not provided any evidence to suggest LVR has any authority to act on behalf of the owner or its agents and without such authority LVR cannot bind the owner and the owner's authorized agents to a tenancy agreement with TS. Therefore, I reject this argument as a basis for finding a tenancy between TS and the owner or owner's agents.

Section 1 of the Act provides the definition of "tenancy agreement" 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 license to occupy a rental unit"

It is undisputed that TS and the owner, or owner's agents, did not execute a written tenancy agreement with each other

As for an implied agreement, I have considered the actions of the parties. TS remained on the property after LVR moved out; however, I find the actions of the owners inconsistent with implying a tenancy formed with TS. In particular, I note:

- The landlord's agents informed TS that she would have to vacate the property along with LVR.
- The landlord did not attempt or seek to enter into a written tenancy agreement with TS and I find that is inconsistent with the landlord's actions with its past tenants, which is to execute written tenancy agreements.
- The landlord served its tenant LVR with a Notice to End Tenancy in November 2019 and when the property remained occupied by TS, the landlord proceeded to apply for an Order of Possession against LVR in December 2019, served LVR with notification its application in December 2019 and notification of the hearing set to consider the landlord's request in January 2020, and the landlord appeared for the hearing in February 2020 to obtain an Order of Possession, all of which I find to be consistent with the landlord wanting to regain possession of the rental unit while TS was been occupying the property and inconsistent with entering into a tenancy agreement with TS.

TS submitted that an oral agreement was entered into with the owner's agents on or about January 9, 2020. While all parties agree there was a meeting at the property on January 8 or 9, 2020, the owner's agents take the position that there was merely discussion about entering into a tenancy with TS. While the tenant sent a text message to JG trying to set up a time to pay rent shortly thereafter, and JG's initial response did not inform TS that they were not accepting rent from her but that they would have to reschedule a meeting, I find that one text message insufficient to satisfy me that TS entered into a tenancy agreement with the owner's agent(s) when I consider:

- Entering into an oral tenancy agreement with TS is inconsistent with the landlord's on-going efforts from November 2019 through February 2020 to regain possession of the rental unit, as described earlier.
- The landlord did not request, require or accept any monies from TS.

In light of all of the above, I find the applicant TS does not have standing as a tenant of the property. Rather, I find TS was an occupant of the property or, at best a sub-tenant of the former tenant LVR during LVR's tenancy, and in either scenario TS was required to vacate the property when the tenancy of LVR ended. I find TS and the owner, or agents for the owner, have not entered into a tenancy agreement with each other. Accordingly, I find TS does not have a legal right to continue to occupy the subject property.

Since TS is not a tenant of the owner or agent's owners, I cannot provide the owner with an Order of Possession against TS. Rather, the owner's remedy to regain possession of the property is to enforce the Order of Possession it already has against the tenant LVR.

Since TS is not a tenant of the owner or owner's agents, TS may not make an Application for Dispute Resolution or claim against the owner or owner's agents under the Act. Rather, TS's remedy would be against LVR in the appropriate forum. If TS and LVR had a sub-tenancy agreement TS may make an Application for Dispute Resolution against LVR through the Residential Tenancy Branch. If TS and LVR had a shared living arrangement the appropriate forum may include the Civil Resolution Tribunal or Small Claims court.

Conclusion

I have found that the named parties do not have a tenancy agreement to which the Residential Tenancy Act applies and I decline to grant the relief sought by the parties in their respective Applications for Dispute Resolution.

The applicant TS was an occupant of the rental unit under a tenancy the landlord had with LVR or may have had a sub-tenancy agreement with former tenant LVR; however, the tenancy for LVR has already ended and TS does not have a right to continue to occupy the subject property. Accordingly, the owners, or owner's agents, may regain possession of the subject property by enforcing the Order of Possession already issued against the owner's tenant LVR.

The parties are at liberty to pursue recover any monetary losses they may have suffered against LVR in the appropriate forum.

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: March 18, 2020

Residential Tenancy Branch