



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacDonal Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, OLC, LRE, RP, PSF, LAT, AS

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the applicant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the respondent/landlord;
- an order requiring a landlord to comply with the Act, regulation or tenancy agreement;
- an order suspending or setting conditions on a landlord's right to enter the rental unit;
- an order requiring a landlord to make repairs to the rental unit for health or safety reasons;
- an order requiring a landlord to provide for services or facilities required by the tenancy agreement or the Act;
- authorization to change the locks to the rental unit; and
- authorization to assign or sublease the tenancy.

The applicant and the respondent's agent (respondent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

In response to my inquiry, the applicant said that the additional named tenants in her application were her five year old twins. The respondent submitted that the applicant listed the incorrect corporate name for the landlord/respondent.

I find it appropriate to amend the applicant's application to remove the names of her young children and to correct the name of the corporate respondent. Those changes are reflected on the style of cause page of this Decision.

The parties were given an explanation of the hearing process and were both affirmed before providing their testimony.

I find that not every issue in the application is sufficiently related to each other. At the beginning of the hearing, I explained to the applicant that I would be unable to deal with every issue listed in the application.

Under 2.3 of the Residential Tenancy Branch Rules of Procedure (Rules), I have used my discretion to dismiss unrelated claims.

I have determined, and the applicant was informed, that the portion of her application dealing with her request to cancel the Notice was the most pressing need and as a result, I have severed the applicant's Application and the hearing proceeded on the applicant's request to cancel the Notice. A determination of the remaining portion of the applicant's application will be made at the conclusion of this Decision.

Thereafter, the matter of whether the applicant is actually a tenant relating to this rental unit was discussed, as will be more fully set out.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the applicant a tenant of the respondent/landlord, entitled to occupancy of the rental unit?

If so, is the applicant entitled to an order cancelling the Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, only the principal aspects of the applicant's claim and my findings around it are set out below.

The Notice submitted by the applicant was dated February 3, 2020, for an effective move-out date of February 13, 2020, listing unpaid rent of \$3,561.00 owed as of February 1, 2020.

The tenant listed on the Notice was WM.

The respondent submitted that the applicant was not their tenant, but rather a short-term guest of their actual tenant named in the written tenancy agreement submitted into evidence, WM. The landlord submitted that their actual tenant, WM, did not receive permission to sub-let the rental unit. The respondent submitted that the applicant was an illegal occupant and had not been given permission to stay by the respondent/landlord.

The respondent questioned why the applicant was allowed to file this application, as they have already received an order of possession of the rental unit against WM, which they submitted into evidence. Along with the order of possession, the respondent submitted a copy of the Decision of the adjudicator for the Residential Tenancy Branch (RTB), both dated March 19, 2020, which granted the respondent/landlord the order of possession of the rental unit and a monetary order for unpaid rent.

I note the previous Decision was based upon the same Notice that the applicant seeks to cancel. That Decision number is located on the style of cause page of this Decision.

I note that the respondent/landlord received the Decision, order of possession and monetary order for unpaid rent through their own, separate application under the Direct Request process, which granted the landlord's application based upon a Notice which was undisputed by the named tenant, WM.

Applicant's submissions –

The applicant submitted a considerable amount of oral and written evidence. Among the submissions, the applicant said that they, she and her roommates, were not illegal occupants of the rental unit and that she had a tenancy agreement to stay there.

To support this position, the applicant referred to a one paragraph email she submitted into evidence. This email was dated December 11, 2019, was signed by WM's husband, and which contained some language about weekly payments from the applicant. I note that the sender of the email was another person, QJ.

The applicant submitted that she paid the agreed upon rent for December 2019, and has been trying to pay the rent since January, but it has not been accepted.

The applicant alleged that she is the victim of a six home, housing scam, and if she was not successful with this application, she would be filing a civil claim.

I also note the applicant testified about the other issues in her application, such as illegal entries to the rental unit; however, the applicant was advised that the issue remained the Notice.

I also note that in one of the texts submitted by the applicant, an apparent communication with WM, the respondent confirmed she “only sub-leased” the unit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I find the applicant submitted insufficient evidence that a tenancy ever formed between this applicant and this respondent. In making this determination, I considered the applicant’s own evidence, a communication with WM in which the applicant confirmed she sub-leased the rental unit.

There was no evidence that the respondent allowed WM to have a sub-tenant and the landlord strongly denied WM was granted authority to sub-lease the rental unit. The document the respondent relied upon to support a tenancy was created was a short email from WM’s husband, not this landlord. I note this email only mentioned payments for December 2019, not any other terms which are normally in a tenancy agreement negotiated between tenants and landlords.

The undisputed evidence is that the tenancy at this rental unit address with the tenant listed on the written tenancy agreement, WM, was ended by an adjudicator with the RTB in a Decision dated March 19, 2020.

Due to the above, I therefore find this matter has been decided upon by another decision maker at the RTB with a Decision and order of possession of March 19, 2020.

The parties were informed during the hearing, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision of

March 19, 2020, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

I therefore dismiss the applicant's application to cancel the Notice of February 3, 2020.

For the above reasons, I likewise dismiss the balance of the applicant's application that was severed, as I have determined that the tenancy had ended by a previous Decision.

Conclusion

The applicant's application seeking cancellation of the Notice is dismissed as this matter has been previously decided by an adjudicator with the Residential Tenancy Branch in a Decision of March 19, 2020.

The balance of the applicant's application that was severed is likewise dismissed.

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: April 30, 2020

Residential Tenancy Branch