



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice"), pursuant to section 46;
- authorization to recover the filing fee for this application pursuant to section 72.

Applicant BF, rental unit owner SQ and property manager TA (the landlord) attended the hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's evidence and notice of hearing (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Is BF entitled to cancellation of the Notice?
2. If the Notice is confirmed, is the landlord entitled to an Order of Possession for non-payment of rent, pursuant to section 55?
3. Is BF entitled to recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.



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BF affirmed he moved in to the rental unit on June 2018. DA was already living in the rental unit. Monthly rent is \$680.00 due on the first day of the month. BF is responsible for paying \$350.00 and DA is responsible for paying \$330.00. DA would collect rent from BF and would pay the amount of \$680.00 to the landlord. BF did not pay a security deposit. BF affirmed the landlord always knew he lived at the rental unit and he has communicated with the landlord by text messages and e-mail.

BF submitted copies of cheques for payments of \$350.00 on November 01 and December 01, 2019 and January 01, 2020. All the payments were addressed to DA. BF also affirmed he can not leave the rental unit because of a health issue and because of the Covid19 situation.

The landlord affirmed he had a tenancy agreement with DA who moved in on February 28, 2016. He does not know if DA is still living at the rental unit.

A copy of the Notice was entered into evidence by BF. The Notice, dated January 30, 2020, is addressed to DA and indicated unpaid rent of \$2,250.00. The Notice's effective date is February 10, 2020. BF affirmed he received the Notice posted on the freezer door in the kitchen on January 31, 2020.

The landlord affirmed in the tenancy agreement with DA monthly rent is \$680.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$340.00 was collected from DA and the landlord still holds it in trust. The landlord affirmed there is a written tenancy agreement with DA which does not include BF and that DA agreed he could not have any other occupants in the rental unit. A written tenancy agreement was not entered into evidence. The landlord always dealt with DA, never received rent from BF, never communicated with BF and did not know BF lives in the rental unit.

Analysis

Section 1 of the Act defines landlord, tenancy agreement and tenant as:

"landlord", in relation to a rental unit, includes any of the following:

(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



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- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

“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 licence to occupy a rental unit;

“tenant” includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

BF produced into evidence three cheques for payment of rent, all of them addressed to DA. BF affirmed he communicated with the landlord by text messages and e-mail but did not produce them in evidence. No written tenancy agreement was entered into evidence and BF affirmed that when he moved in, DA already lived in the rental unit. The Notice names DA and not BF. The landlord affirmed he never communicated with BF.

I find BF failed to prove, on a balance of probabilities, that the landlord permitted him to occupy the unit under a tenancy agreement.

Residential Tenancy Branch Policy Guideline 13 defines occupant as:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Residential Tenancy Branch Policy Guideline 19 states:

Disputes between tenants and landlords regarding the issue of subletting may arise



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when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

Based on the testimony of both parties and the cheques submitted into evidence, I do not find DA was acting as an agent of the landlord. Thus I find BF is an occupant of the rental unit.

As such, BF has no rights under the Act.

Therefore, the Residential Tenancy Branch has no jurisdiction in the matter before me and this application is dismissed without leave to reapply.

As BF was not successful, he is not entitled to recover the filing fee

Conclusion

I dismiss this application 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 *Residential Tenancy Act*.

Dated: April 08, 2020

Residential Tenancy Branch