



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 27, 2020, wherein the Tenant sought an Order of Possession of the rental unit.

The hearing of the Tenant's Application was scheduled for 9:30 a.m. on May 22, 2020. The Tenant called into the hearing as did her brother, S.H. The Landlord, T.K. also called into the hearing. The other occupant of the rental unit, C.D., also called into the hearing on behalf of the Landlord. The Tenant, the Landlord and C.D. were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant's brother, S.H., did not participate in the hearing and was in attendance as moral support for the Tenant.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

In evidence before me was a typed document purportedly written by individuals with the initials T.D. and L.H. Neither party made any reference to this letter during their submissions before me. Further, this letter is not signed, nor did T.D. and L.H. attend the hearing so provide testimony as to the contents. I confirm that I gave no evidentiary weight to this letter in making this my Decision.

Preliminary Matter

At the outset of the hearing the Landlord confirmed the spelling of his surname. Section 64(3)(c) of the *Residential Tenancy Act* provides me authority to amend an Application for Dispute Resolution. I therefore amend the Tenant's Application to accurately name the Landlord.

Issue to be Decided

1. Is the Tenant entitled to an Order of Possession?

Background and Evidence

The Tenant testified that she moved into the rental unit in 2013. She did not enter into a formal written tenancy agreement at the time.

On the Tenant's Application, she wrote that "her roommate packed up all of her belongings and denied her access to the rental unit".

In evidence before me was a copy of a tenancy agreement between the roommate, C.D., and the Landlord which appears to have been signed on January 15, 2020.

The Tenant testified that at no time did she indicate she was vacating the rental unit. Rather, her brother, S.H., was in a car accident and she left the city in which the rental unit is located to assist him. The Tenant stated that her rent is paid for by the Ministry of Social Development and Poverty Reduction and as such her rent continued to be paid to the Landlord while she was with her brother.

The Tenant testified that when she attempted to access the rental unit, she discovered that her roommate, C.D., had removed her personal items and changed the locks on the rental unit. The Tenant then filed this Application seeking an Order of Possession of the rental unit.

In response to the Tenant's testimony and submissions, the Landlord confirmed the Tenant has resided in the rental unit since 2013. He stated that the Tenant entered into an oral tenancy agreement with T.H.

The Landlord also stated that the Tenant's roommate, C.D., informed him the Tenant was moving out of the rental unit and that she, (C.D.) wished to sign her own tenancy

agreement with the Landlord. The Landlord confirmed that he accepted rent from C.D. and signed the tenancy agreement with C.D. on the basis of C.D.'s information to him. The Landlord also stated that he did not speak to the Tenant, A.R. about what C.D. had told him.

The Landlord confirmed that the Tenant's rent is paid for by the Ministry of Social Development and Poverty Reduction. He stated that when C.D. informed him the Tenant had moved out, he returned the Tenant's April and May rent to the Ministry of Social Development and Poverty Reduction.

C.D. also provided testimony on behalf of the Landlord. She confirmed she moved into the rental unit with A.R. in late 2019. She claimed that she and A.R. are related by marriage. C.D. further claimed that she was told to change the locks on the rental unit by the police, as she has concerns about "illegal drug use" and felt threatened by the Tenant's brother, S.H.

Analysis

After consideration of the testimony, evidence and submissions made and on a balance of probabilities I find as follows.

A residential tenancy may only be ended in accordance with section 44 of the *Act* which reads as follows:

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 45 [*tenant's notice*];

(i.1)section 45.1 [*tenant's notice: family violence or long-term care*];

(ii)section 46 [*landlord's notice: non-payment of rent*];

(iii)section 47 [*landlord's notice: cause*];

(iv)section 48 [*landlord's notice: end of employment*];

(v)section 49 [*landlord's notice: landlord's use of property*];

(vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii)section 50 [*tenant may end tenancy early*];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;

(d)the tenant vacates or abandons the rental unit;

(e)the tenancy agreement is frustrated;

(f)the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I accept A.R.'s testimony that she did not end her tenancy, rather she simply went to the city in which her brother resides to assist him after his car accident. While she was gone her rent continued to be paid by the Ministry of Social Development and Poverty Reduction, until the Landlord returned some of the funds.

I accept the Landlord's evidence that he was informed by C.D. that A.R. had moved out. On this basis he entered into a written tenancy agreement with C.D. Although the agreement is dated, January 15, 2020.

I find that at no time, did A.R. inform the Landlord that she wished to end her tenancy.

C.D. provided testimony on behalf of the Landlord. She did not dispute the Landlord's testimony as to the circumstances giving rise to the January 15, 2020 tenancy agreement.

There was no evidence before me that the Tenant gave formal written notice to end her tenancy. The parties agreed that the Landlord also did not issue a notice to end tenancy pursuant to the *Act*. As such, I find that A.R.'s tenancy has not been ended in accordance with the *Act* and therefore continues.

A.R. is therefore entitled to an Order of Possession.

Correction of Oral Decision Made at May 22, 2020 Hearing Regarding Status of C.D.

During the hearing I informed the parties that it was my Decision that the formal written tenancy agreement between C.D. and the Landlord created a situation whereby the Tenant and C.D. were “tenants in common” with separate tenancy agreements (A.R.’s oral agreement from 2013 and C.D.’s written agreement from 2020). Upon further consideration, I find that portion of my Decision requires correction.

Section 78 of the *Act* allows me to correct or clarify a Decision and reads as follows:

Correction or clarification of decisions or orders

- 78** (1) Subject to subsection (2), the director may, with or without a hearing,
- (a) correct typographic, grammatical, arithmetic or other similar errors in his or her decision or order,
 - (b) clarify the decision or order, and
 - (c) deal with an obvious error or inadvertent omission in the decision or order.
- (1.1) The director may take the steps described in subsection (1)
- (a) on the director's own initiative, or
 - (b) at the request of a party, which request, for subsection (1) (b) and
 - (c), must be made within 15 days after the decision or order is received.
- (2) A request referred to in subsection (1.1) (b) may be made without notice to another party, but the director may order that another party be given notice.
- (3) The director must not act under this section unless the director considers it just and reasonable to do so in all the circumstances.

While I had yet to write my formal Decision, I did inform those in attendance at the hearing on May 22, 2020, that the Tenant and C.D. were tenants in common. I find that was incorrect.

A.R. entered into an oral tenancy agreement with the Landlord in 2013. Section 1 of the *Act* specifically provides that a tenancy agreement includes an oral tenancy agreement. As such, I find that A.R. has been the Tenant of the rental unit since 2013.

The circumstances giving rise to C.D.'s written tenancy agreement are as follows. C.D. entered into a written tenancy agreement with the Landlord dated January 15, 2020. The Landlord testified that C.D. informed him that the Tenant, A.R., had vacated the rental unit. The Landlord further testified that it was on the basis of C.D.'s information to him that he entered into the written tenancy agreement with her. The Tenant denied vacating the rental unit and denies ending her tenancy with the Landlord. The Landlord confirmed he did not speak to the Tenant about her tenancy and merely relied on C.D.'s information to him.

C.D. was in attendance at the hearing and did not dispute the Landlord's testimony with respect to his claim that she informed him A.R. had moved out. Rather, she responded that she changed the locks and removed A.R.'s personal items on the advice of the police as she felt threatened by A.R.'s brother, S.H.

I find the residential tenancy agreement between C.D. and the Landlord was obtained by C.D. fraudulently, and on the basis of C.D.'s false information regarding the Tenant vacating the rental unit. **I therefore find the residential tenancy agreement between C.D. and the Landlord, dated January 15, 2020, to be of no force and effect.**

C.D. identified herself at the hearing as a "sub landlord". She also provided evidence to the Residential Tenancy Branch online service portal on behalf of the Landlord and provided her email address as the Landlord's for the purposes of communicating with the Branch. C.D. also testified on behalf of the Landlord.

I find that C.D. is not a sub landlord and she is not a Tenant. She moved into the rental unit with the Tenant A.R. (to whom she is apparently related by marriage). She moved in as a roommate of the Tenant and as I have found her written tenancy agreement to be of no force and effect, C.D. is an occupant.

Residential Tenancy Branch 13. Rights and Responsibilities of Co-tenants provides in part as follows:

H. OCCUPANTS If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the

new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

As an occupant, C.D. was not permitted to remove A.R.'s belongings or to change the locks. Had she been a Landlord such egregious behaviour could attract administrative penalties.

While the conflict between C.D. and A.R. is unfortunate, A.R. is the Tenant and is entitled to access to the rental unit. C.D. is an occupant without any rights or responsibilities under A.R.'s tenancy agreement. As such, unless A.R. agrees to allow C.D. to continue to reside in the rental unit, C.D. has no legal right to be there.

During the hearing I directed C.D. to provide the Landlord with keys to the rental unit within 24 hours of the hearing. C.D. stated that she would do so.

I therefore Order as follows:

1. Should C.D. not provide the keys to the rental unit to the Landlord, by May 23, 2020 at 9:30 a.m., the Landlord shall change the locks on the rental unit.
2. By no later than 2:00 p.m. on May 26, 2020, the Landlord shall provide the Tenant with keys to the rental unit.
3. The Tenant shall communicate with the Ministry of Social Development to ensure the rent cheques for A.R.'s April 2020 and May 2020 rent are reissued to the Landlord.

Conclusion

The Tenant's Application for an Order of Possession is granted.

The Landlord shall provide the Tenant keys to the rental unit by no later than 2:00 p.m. on May 26, 2020.

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: May 25, 2020

Residential Tenancy Branch