



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, DRI, RR, AAT, RP, PSF, AS, OLC, FFT**

Introduction

This hearing was scheduled for hearing, via teleconference call, to deal with a tenant's application for several remedies, including: orders for compliance, repair orders, authorization to reduce rent payable, dispute of a rent increase, orders to allow access to the rental unit or property, and authorization to assign or sublet the rental unit.

All named parties appeared at the hearing. It should be noted that one of the named respondents "KP" was driving while participating in the hearing and his telephone connection would drop at various times. I suggested KP stop driving while in a good reception area but he chose not to do so and there were significant periods of time where KP was not present.

KP testified that he did not receive notice of the hearing. The tenant testified that she sent it to KP by email but that he did not respond to her emails. KP stated his email has not been working for the last few days and he learned of the hearing from the other named respondent BV. In any event, KP testified that he does not have a tenancy relationship with the tenant that falls under the Act.

BV testified that he received email communication from the tenant that included some evidence but that he did not receive the proceeding package from the tenant. Rather, he contacted the Residential Tenancy Branch and the Branch sent him the Notice of Dispute Resolution Proceeding. BV submitted that I should dismiss the tenant's Application for Dispute Resolution, without leave to reapply, because he was not served properly and because he does not have a tenancy relationship with the tenant to which the Act applies.

I informed BV that I would not dismiss the Application for Dispute Resolution without leave unless I was satisfied the parties do not have a tenancy relationship to which the

Act applies and to make that determination I need to proceed to hear from the parties. BV then stated he was willing to be deemed served and that we proceed so that I may make a determination as to whether the tenant has standing as his tenant under the Act or his roommate.

I informed the parties that I would make that determination and for the remainder of the hearing, I heard much confusing and conflicting testimony concerning the occupancy of the property.

The tenant sought a number of remedies in making her Application for Dispute Resolution; however, during the hearing, the tenant clarified that she primarily seeks to regain access and possession of the rental unit. As such, if I find the respondents have a landlord/tenant relationship I shall deal with the tenant's request to regain access and possession to the basement suite and dismiss the other issues with leave to reapply.

Issue(s) to be Decided

1. Does the tenant have standing as a tenant and if so, who is her landlord?
2. In seeking to regain access and/or possession of the rental unit, has the tenant named the correct parties?

Background and Evidence

I heard consistent testimony that under an oral agreement, the tenant was provided occupancy of the "main floor" of the house by KP approximately 2.5 years ago. The tenant stated she was required to pay rent of \$1200.00 per month, plus utilities. KP testified that he is the "authorized representative" of the corporate owner of the property although KP stated he did not know if he was a shareholder of the corporate owner. The tenant testified that KP did not reside on the main floor when she did as he moved out to live with his girlfriend. KP stated he did reside on the main floor with the tenant and they were roommates.

In February 2020 KP and the tenant had a meeting and they agreed that she would vacate the "main floor" and that she would rent the "basement suite" of the house and pay rent to BV in the amount of \$800.00, including utilities, starting on February 15, 2020.

BV is a friend of KP and BV rented the entire property from KP for \$1900.00 per month, plus utilities. BV was authorized to sub-let the basement suite but he may also choose

to use the basement suite for his own use. BV stated that when BV's tenancy started he expected the tenant to be occupying the basement suite and to receive rent of \$800.00 from the tenant. Rather, BV found that the tenant had sub-let the basement suite to two other individuals and the tenant took possession of an area of the house BV described as being a separate B & B unit.

The tenant was of the position she acquired two roommates to live with her in the basement suite and the area BV described as being a B & B unit is actually a living room and bathroom that was an extension of the basement suite.

I heard that BV was not receiving rent from the tenant for the basement suite and there was an altercation between the tenant and her sub-tenants/roommates.

It is undisputed that the tenant has been locked out of the basement suite, or a portion of it, but the tenant still has occupancy of the area described by BV to be the B & B unit.

BV stated he did not lock the tenant out of the basement suite. The tenant stated she does not know who locked her out and it may have been her "roommates".

The tenant seeks to regain possession of the basement suite.

BV testified that he entered into a new tenancy agreement with the tenant's sub-tenants.

BV has offered the tenant use of the B & B for \$300.00 per month, along with certain conditions, but the tenant was not agreeable to BV's terms.

Analysis

The Act applies to tenancy agreements, rental units and residential property. The Act cannot be avoided and parties cannot contract out of the Act.

Section 1 of the Act defines a tenancy agreement to include written, oral, express or implied terms between a landlord and a tenant concerning a tenant's right to occupy a rental unit.

I heard the tenant used to occupy the main floor of the house under an agreement with KP. It is undisputed that that living arrangement, whether it was a tenancy or a shared

living arrangement, has ended by agreement effective February 15, 2020 when the tenant took or was to take possession of the basement suite and pay rent to BV.

By way of this application, I find the tenant is seeking remedy with respect to access and possession of the basement suite and I proceed to determine whether she has or had a roommate relationship or a landlord/tenant relationship with either of the named respondents for the basement suite.

I heard consistent testimony from all parties that there was an oral agreement for the tenant to rent the basement suite of the property starting February 15, 2020 and pay rent of \$800.00 per month to BV, who rents the entire property from the owner or owner's agent and has authority to sub-let the basement suite. From what I heard, the basement suite is self-contained and separate from the "main floor" unit where BV resides.

The definition of "landlord" includes the owner or the owner's agent. The definition of landlord also includes a person who has right to possession of a rental unit but does not occupy the rental unit and exercises the rights of a landlord. This latter definition applies where a tenant does not occupy a rental unit and sub-lets the unit, thereby becoming the landlord to the sub-tenant.

In this case, all parties agreed that the basement suite was a separate self-contained suite from the main floor unit where BV resides and BV is a tenant authorized to sub-let the basement suite and there was an agreement for the tenant to rent the basement suite from BV. Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Therefore, it is irrelevant if the tenant ever occupied the rental unit, and I find there to be a landlord/tenant relationship for the basement suite between the tenant and BV and from this point forward, reference to landlord means BV and vice versa.

In light of the above, I find that both the tenant and BV were bound to comply with the requirement of the Act as landlord and tenant for the basement suite from February 15, 2020 onwards.

I heard consistent testimony that the tenant no longer has access to a portion of the basement suite or the entire basement suite, depending on which areas are included in the basement suite. It is uncertain to me whether the living room/bathroom area

described by the landlord as a B & B unit was included in the basement suite given the opposing testimony provided to me and the lack of other corroborating evidence.

In any event, whether the tenant has lost access to all or a portion of the basement suite, I accept BV's testimony that he did not lock the tenant out of the basement suite and that it was the persons the tenant permitted occupancy of the basement suite who did that. I accept BV's position because the tenant herself acknowledged she did not know who locked her out and that it could have been her "roommates" in the basement suite. This is also consistent with the text messages included in the tenant's evidence that point to an altercation between the tenant and her roommates/sub-tenants.

As for the tenant's request to regain possession of the basement suite, if the tenant and the persons she permitted occupancy of the basement suite are roommates, as submitted by the tenant, the Residential Tenancy Branch does not have jurisdiction to resolve disputes between roommates and the tenant will have to seek remedy against her roommates in the appropriate forum.

Since the tenant has a burden to establish an entitlement to the remedies she seeks against the parties she named, based on the tenant's own submissions that she acquired roommates for the basement suite, and I have accepted that it is her "roommates" that have locked her out of the basement suite, I find the tenant's request to regain access and possession of the rental unit must be made against her roommates and I dismiss her requests for access and possession against the named respondents. The other remedies sought by the tenant against BV are dismissed with leave to reapply.

Conclusion

A landlord/tenant relationship formed between the tenant and the respondent identified as BV for the basement suite.

The tenant has been locked out of the basement suite, or a portion of it. Upon consideration of everything before me, I find, on the balance of probabilities, that the landlord did not lock her out of the basement suite but that it was likely the tenant's roommates who did. In that case, the tenant's dispute is with her "roommates" and the Residential Tenancy Branch does not have jurisdiction to resolve disputes between roommates. Therefore, the tenant's request for access and possession against the named respondents is dismissed and the tenant remains at liberty to seek resolution with her roommates in the appropriate forum.

The other remedies sought against BV are dismissed with 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: June 26, 2020

Residential Tenancy Branch