



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Renters Management Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an emergency order of possession of the rental unit for the Tenant, and to recover the \$100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure "(Rules)"; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on August 27, 2019 and was to run to August 31, 2020 and then operate on a month-to-month basis. The Parties agreed that the Tenant paid the Landlord a monthly rent of \$3,120.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,560.00, and no pet damage deposit.

The Landlord said that the Tenant's roommate, [B.], signed a Mutual Agreement to End the Tenancy ("Mutual Agreement"), which the Tenant said was the roommate's attempt to have her name removed from the lease. The Tenant said that at the top of the Mutual Agreement it says, "This form is not a notice to end tenancy".

The Tenant said:

[The Agent] knew that [my roommate] had moved out and didn't reside there. I was paying the rent, so in the onscreen shots [I submitted, it shows that] he had reached out to [B.] to see if she planned to live in the apartment. She thought that it was a good idea to remove her from lease. He said, 'Great, can you sign this form as of today's date?'

Essentially, I had no idea that any of this had happened. Once he had received the agreement, he changed the locks. I believe he was trying to get me out in the middle of the pandemic, and he was a little bit sneaky in the way that he did that.

The Tenant said that she is a sex worker. The Landlord submitted a number of revealing photographs of the Tenant that he said are from the Tenant's website. It is unclear why the Landlord found it relevant and necessary to submit these photographs to this proceeding.

The Tenant submitted copies of the Agent's text exchange with the Tenant's former roommate dated May 29, 2020 and June 1, 2020, as follows:

Agent: Hey [B], I'm wondering if you ever plan to live in the apartment again?

Maybe it's easier to just take you off the lease so we can just do deal with [the Tenant] going forward? What do you think?

Roommate: Hi [Agent],

Good to hear from you. I don't plan on moving back into the apartment no. I was hoping I would be able to at some point, but my family has needed me here in [this city] and will more than likely continue to need me. I would appreciate that a lot if that's possible! I think that would be best for everyone, including my girlfriend.

Agent: Hey [B.], sorry for the delay. Yeah I think it would work better that way. Okay can you sign this form agreeing to end the tenancy for you. I just put it as of today's date.

The Tenant said:

I hadn't discussed with [B.] anything. She just assumed that she was being released from the lease, and I wouldn't be impacted in any way. She reached out to [the Agent] and he didn't get back to her. She saw that my name wasn't anywhere on the form, so I wouldn't be impacted. It says: 'This form is not a notice to end tenancy', so she thought it wasn't ending the tenancy. She wasn't trying to get away from liability, she would never have signed it if she understood what [the Agent] was doing.

The Agent said:

I don't think I have too much more to say. [B.] was the original tenant and I dealt with her for most of the lease. I assumed that they would discuss it together, and I didn't think it was necessary to deal with both parties.

The Agent said that the rental unit has since been rented to a new tenant.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Policy Guideline #13 ("PG #13") clarifies the rights and responsibilities relating to

multiple tenants renting a rental unit under a single tenancy agreement. In terms of ending a tenancy, it states:

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

...

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

If a tenant remains in the rental unit and continues paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.

[emphasis added]

I agree that the Mutual Agreement is not a “notice” to end the tenancy. However, pursuant to section 44(1)(c) of the Act, a landlord and a tenant may agree in writing to end the tenancy. I find that the Tenant’s roommate made such an agreement with the Agent, thereby ending the tenancy for both roommates.

I find the Agent’s behaviour in this matter to be reprehensible. I find it reasonable to infer from the evidence before me that the Agent and possibly the owner of the residential property did not want a sex worker living in the rental unit. Further, I find that the Agent used deceitful means to end the tenancy “legally”. Unfortunately, I find it more likely than not that the Tenant’s roommate was misled by the Agent into believing that the tenancy would continue for the Tenant. The Tenant and her roommate would have been wise to contact the RTB for advice in this matter before signing anything; however, hindsight is 20/20.

The Tenant did not apply for any monetary compensation, and therefore, I do not have the authority to award her compensation in this situation; however, she may wish to consult a lawyer to discuss options available to her in this regard. Further, the Tenant may wish to consider Policy Guideline #16, which states:

An arbitrator may also award compensation in situations where establishing

the value of the damage or loss is not as straightforward:

- ‘Nominal damages’ are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- ‘Aggravated damages’ are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

[emphasis added]

Based on the evidence and authorities, I find it necessary to dismiss the Tenant’s Application wholly, as I find it is without merit in this set of circumstances. I find the Landlord ended the tenancy legally, if not ethically.

Conclusion

The Tenant’s Application is dismissed wholly, because the Tenant did not provide sufficient evidence to support the merit of her position in this matter.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 08, 2020

Residential Tenancy Branch