



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act [landlord's notice for cause; and
- recovery of the filing fee paid for this application.

The landlords and the respondent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and both parties confirmed receiving the other's evidence. The respondent, however, raised the issue that some of the landlords' evidence was not submitted in time, as the evidence was filed on June 21, 2020.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (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.

Preliminary and Procedural Matters-

Due to the written submissions of the parties, it was necessary to determine whether I had jurisdiction over this dispute. The parties were informed that I would hear evidence first on this matter, that is, whether this dispute falls under the jurisdiction of the Act.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the Residential Tenancy Act so that I have authority to resolve this dispute?
2. If so, should the tenancy end early and an Order of Possession be granted to the landlords; and
3. Are the landlords entitled to recover the filing fee?

Background and Evidence

Jurisdiction –

The landlords submitted a copy of a written tenancy agreement showing a tenancy formed between the landlords and the respondent and his wife, SC. That tenancy began on June 1, 2014, for a fixed term through June 1, 2015. The tenancy converted to a month-to-month tenancy thereafter.

A new written tenancy agreement was signed by the same parties, showing a tenancy starting on January 1, 2016, for a fixed term through January 1, 2017. The tenancy converted to a month-to-month tenancy thereafter.

The landlords submitted that although the respondent and SC were co-tenants, their marriage fell apart in 2019.

The landlords submitted that tenant SC ended the tenancy by way of a hand-written notice, dated March 28, 2020. The notice stated that she wished to formally end her co-tenancy with the respondent, immediately. The notice also provided the address of the rental unit and was signed and dated. Landlord JG said SC hand-delivered the letter to him.

The landlords submitted a copy of SC's notice.

The landlords submitted that they entered into a new tenancy with SC only as the tenant, as shown by the written tenancy agreement filed into evidence.

The written tenancy agreement shows a tenancy start date of June 1, 2020, for a fixed term through May 31, 2021.

The landlords submitted that although the tenancy between them and the original co-tenants, the respondent here and SC, ended, and a new tenancy between them and SC began, the respondent refuses to vacate the rental unit.

Respondent's submissions –

The respondent submitted that the landlords and SC have colluded with each other in an attempt to circumvent the law and have him vacate the rental unit. The respondent said he was unaware that SC had signed a written notice to end the tenancy until he saw the document in the landlords' evidence.

The respondent said that the notice was a simulated letter, meant to have him removed from the rental unit.

The respondent mentioned that he and SC have a joint custody situation for the time being, and they both live in the rental unit at different times, so their son is not displaced.

The respondent asserted that even if the tenancy had ended, a new one implicitly formed when the landlords accepted rent from him in April and May. The respondent pointed out that the new tenancy agreement between the landlords and SC was not signed until mid May, well after he, the respondent, was established as the sole tenant between AB and himself, due to the continued rent payments.

Landlord's rebuttal –

Landlord AB said that the rent was paid by direct deposit, and at the time the original tenancy was ending and the new tenancy with SC began, a lot of issues and concerns were wrapped up around Covid-19. AB said she did not know who could be evicted or if anyone could be required to leave.

AB said that SC has paid the rent for the months of June and July, 2020. AB said that she has received a rent payment for July from the respondent here, but is ready to send

a cheque to the respondent, as per the suggestion of her bank. AB said she wanted to see the outcome of the hearing prior to sending a cheque.

Analysis

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

I acknowledge that these matters are complicated by the ongoing family matters between SC and the respondent, in relation to their separation and guardianship of a child.

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice....

In this case, the tenancy had become a month-to-month tenancy, per the terms of the written tenancy agreement.

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable.

Pursuant to subsection 45(4) of the Act, a notice given pursuant to section 45 must comply with section 52 of the Act.

Section 52 sets out the various requirements of a notice to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,...

After review, I find SC's notice to the landlords ending the original tenancy contains the required information and content to comply with section 52 of the Act.

In this case, if the tenant wanted to end the tenancy by March 28, 2020, the date of the letter requesting an immediate end, the latest day the tenant could provide written notice to end the tenancy is January 31, 2020.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, as the notice was delivered to the landlords on March 28, 2020, I find that the Notice effective date is corrected to April 30, 2020.

Residential Tenancy Policy Guideline, “13. Rights and Responsibilities of Co-tenants” (Guideline 13) sets out the definition of a co-tenant:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

In this case, the respondent and SC both signed the same tenancy agreement and are presumed to be co-tenants under that agreement.

In this case, a co-tenant, SC, provided notice to the landlords to end the tenancy. Guideline 13 sets out the consequences when a co-tenant gives notice:

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.

I therefore find the tenancy ended for all tenants, by SC’s written notice.

Further, Guideline 13 provides:

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.

I find that to be the case here, as SC entered into a new tenancy agreement the next month after the effective date of her notice, as the sole tenant. I also find she began paying the monthly rent to the landlords in June and July.

While the respondent here argued that if he remained in the rental unit and continued to pay rent, the landlord and respondent may have implicitly entered into a new tenancy

agreement, I do not find that to be the case. There was a written tenancy agreement for this rental unit, between SC and the landlords, which I determine would nullify any implicit agreement. Further, I accept the landlord's assertion that they did not know that the respondent remained in the rental unit and did not know how to fully handle this matter due to the ongoing pandemic. I find it reasonable that the landlords were assessing the issues during the month of May 2020, due to their uncertainty.

Due to the above, I find that the written tenancy agreement between SC and the landlords is valid and enforceable. As this tenancy agreement lists SC as the sole tenant, I find that the ~~applicant~~ **respondent** here does not have legal status as a tenant. I find, rather, the ~~applicant~~ **respondent** here is an occupant, not a tenant, and has no rights or obligation under a tenancy agreement.

On this basis, I find that this dispute is not between a landlord and tenant, and therefore, the Act does not apply to this dispute.

Conclusion

Due to the above, I decline to accept jurisdiction of the landlords' application and I find that this dispute between the parties is not as between landlord and tenant.

The landlords are at liberty to seek the appropriate legal remedy to this dispute, which may include showing this Decision to the local law enforcement agency.

I do not grant the filing fee as a result.

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: July 6, 2020

Dated: July 20, 2020

Residential Tenancy Branch