



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, LRE, LAT, OLC,

Introduction

Pursuant to section 58(2) of the Residential Tenancy Act (the Act) the tenant submitted an application for dispute resolution on June 28, 2020 making the following claims:

- I want the landlord to provide services or facilities required by the tenancy agreement or law;
- I want to suspend or set conditions on the landlord's right to enter the rental unit or site;
- I want authorization to change the locks to the rental unit; and
- I want the landlord to comply with the Act, regulation and/or the tenancy agreement.

At the scheduled time for the teleconference hearing, the tenant attended with advocate AS and they both promised to provide truthful testimony. The landlord also attended the hearing and promised to provide truthful testimony. The landlord's witness KC was connected to teleconference for the purpose of giving testimony about service of the landlord's responsive evidence.

Particulars of the tenant's claim and the landlord's response

The landlord confirmed she understood the tenant's claim and recounted the evidence she had received. I find the landlord was given the tenant's application pursuant to section 89(1) of the Act and I admit the tenant's evidence.

During the hearing, the tenant said she had bank statements to prove she paid rent every month and she could provide them now for me to review. I advised the tenant that because the statements were not provided as part of her application and not shared with the landlord prior to the hearing, I will not provide her with the opportunity to admit them at this time (reference: Rule of Procedure 3.14).

The Tenant denied receiving the landlord's evidence. The landlord testified she provided the tenant with her response to the claim on July 17th by giving it in person to an adult who was residing at the address the tenant provided for service of documents on the notice of hearing; the adult identified himself as the tenant's parent. The landlord's witness KC called into the hearing and said she was with the landlord when the documents were served and otherwise corroborated the landlord's testimony about how and when the responsive evidence was served to the tenant.

The landlord provided her response to the tenant seven days prior to the hearing using the address for service provided by the tenant. I admit the landlord's evidence pursuant to section 88(e) of the Act and Rule of Procedure 3.15.

Preliminary matter: withdrawal of claims

The tenant stated she moved out of the dispute address on July 15, 2020. The landlord confirmed she has regained exclusive possession. Both parties agreed the tenancy has ended.

The tenant confirmed the one claim she is pursuing in her application was her claim for the landlord to provide her with rent receipts; all of the other claims are withdrawn.

Pursuant to my authority under section 64(3)(c) of the Act, I have amended the tenant's application to a single claim for an order for the landlord to comply.

Preliminary matter: jurisdiction under Act

Section (4)(c) of the Act states the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The tenant testified she did not share a bathroom or kitchen with the landlord. The landlord testified her kitchen was shared with the tenant and described allowing the tenant to use her stove when the tenant asked her for permission. The parties agreed the unit has the following features: a door to the outside which is secured with a lock and key, a private bathroom and a kitchen area with a small fridge, microwave, toaster oven and a sink.

Advocate AS testified she has been in contact with the tenant throughout the tenancy and has heard the landlord say she previously used the unit for "home share". AS

testified she works as a community health worker and knows that to provide “home share” services, the landlord is required to have a self-contained suite with private kitchen and bathroom.

The advocate does not have direct knowledge of “home share” services allegedly offered by the landlord and this dispute is not related to “home share” accommodation. The advocate’s testimony is not being factored into my consideration of this matter.

Based on the evidence provided by the landlord and the tenant, I find the tenant did occupy a self-contained unit with its own kitchen and bathroom, thus I have jurisdiction to hear this matter.

Issues to be Decided

Is the tenant entitled to an order for the landlord to comply with [section 26\(2\) of the Act](#) and provide the tenant with receipts for rent paid in cash?

Background and Evidence

The tenant testified she had a verbal agreement with the landlord to rent the unit. The living arrangement started as a temporary place for her to live but the situation changed over time. As noted above, she vacated the unit on July 15th, 2020 but still wants receipts for the rent she paid.

The tenant testified the tenancy started on November 7, 2019 and rent was \$650.00 monthly due each month between the 1st and the 7th of the month. The tenant testified the verbal agreement included the terms that rent had to be paid in cash and the tenant “could not use the address for anything”. For example, she could not arrange to be connected to any services.

The landlord gave the tenant a receipt for \$600.00 for rent paid on November 7, 2019. The receipt is a scrap a paper with the handwritten notation “Nov 7/19 received from [tenant’s name] \$600.00.” The tenant claims to have paid an additional \$50.00 for a total of \$650.00 paid in cash to the landlord for November. The tenant testified she again paid \$650.00 in cash for rent in the months of December, January, February, April, May, June and July. She paid \$400.00 instead of \$650.00 in March 2020. She always paid between the 1st and the 7th of the month.

The tenant provided in evidence a copy of a June 22, 2020 letter she gave to the landlord in which she requests rent receipts beginning November 7, 2019.

The landlord responded that the tenant and her two dogs were invited into her home on a temporary basis because the landlord's friend met the tenant at a laundromat during the winter and realized the tenant and her dogs were homeless and needed a place to stay.

The landlord denies having a tenancy agreement with the tenant and testified she did not receive any rent. The landlord testified the \$600.00 she received from the tenant on November 7, 2019 was to obtain some assurance that allowing the tenant and her dogs to stay in her home would not leave her in a financially troubled position. In addition to accepting \$600.00, she asked the tenant to pay \$100.00 for shared utilities and help with chores and gardening. She received approximately \$400.00 sometime in March or April 2020 from the tenant for utilities.

Analysis

- Type of tenancy agreement

The Act defines tenancy agreement as 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. The tenant claims to have entered into a periodic tenancy agreement. The Act defines a periodic tenancy as a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with the Act.

Policy Guideline #9 addresses the difference between a licence to occupy and a periodic or fixed term tenancy agreement. It states there is a presumption a tenancy has been created if the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and the tenant pays a fixed amount for rent. It notes that a factor to distinguish a licence to occupy is that occupancy has been given because of generosity rather than business considerations.

The parties both testified that when the living arrangement commenced, it was to provide the tenant with temporary living accommodation. I find the landlord gave occupancy to the tenant because of generosity rather than business considerations. Given how the tenancy started, the absence in evidence of any record of the requirement for, and receipt of, regular rent payments, I find that the tenant's testimony

and documentary evidence are not enough to substantiate that there was an agreement for the tenant to rent the unit for a specified term with a fixed amount of rent.

- Order for the landlord to comply

[Section 62\(3\) of the Act](#) gives me the authority to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord comply with this Act, the regulations or a tenancy agreement and an order that the Act applies.

As I have found that there is no tenancy agreement for a fixed amount of rent for a fixed period of time, and there is no corroborating evidence of the tenant's claim to have paid rent after November 7, 2019, I decline to make any order for the landlord to issue receipts.

Conclusion

The tenant's application for an order for the landlord is dismissed 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: July 27, 2020

Residential Tenancy Branch