



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT OPT

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession of the rental unit pursuant to section 54 and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72

At the outset of the hearing it was confirmed that the YC was named as an applicant in this dispute, but is now considered a former tenant as he had moved out, and is not an applicant in this dispute despite being named as one. YC did not appear for this hearing. The application was filed by CH, who attended with HH, who identified himself as another tenant in this dispute. The respondents attended the hearing with their legal counsel, LZ, and an interpreter. Both parties appeared and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The respondents confirmed receipt of the application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the respondents duly served with the application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Preliminary Matter: Is The Home Vacant and Available for Re-Occupation?

In order for an Order of Possession to be granted to the applicants, the home must be vacant and be available for re-occupation. The home must not be re-rented, or occupied by new tenants or occupants.

The status of the home was confirmed with the homeowners, who testified that the home was badly damaged during the tenancy, and requires repairs. WW testified that he was in the process of repairs, and plan on occupying the home himself. WW testified that the home has not been re-rented.

As it was confirmed with the respondents that the home has not been re-rented or is currently occupied, I find that an Order of Possession is possible if granted. Accordingly, the hearing proceeded.

Preliminary Matter: Does the Residential Tenancy Branch have jurisdiction to hear the dispute between the parties?

The applicants CH and HH testified that they had entered into a fixed-term tenancy that began on September 1, 2020, with monthly rent set at \$5,000.00. A security deposit was paid to YC, the former tenant who resided in the home. The applicants submitted a copy of a tenancy agreement that named the respondents as landlords as well as YC. The tenancy agreement is dated September 1, 2020, and is signed by both YC and CH. The tenancy agreement names CH and HH as the tenants for this tenancy.

The applicants testified that they had rented the home from YC. The applicants testified that they had paid the monthly rent to YC, who had moved out about a week into the tenancy, and they continued to pay the monthly rent to YC, whom they believed had sublet the home to them with respondents' knowledge and permission. The applicants filed this application after the respondents had changed the locks and denied them access to the home and their belongings as of December 5, 2020 following the issuance of a 10 Day Notice for Unpaid Rent dated December 4, 2020. The respondents confirmed that they had served YC with a 10 Day Notice on December 4, 2020 by posting the 10 Day Notice on the door after YC had failed to pay the monthly rent. A copy of the 10 Day Notice was submitted for the hearing, which names YC as the tenant.

The respondents confirmed that they had changed the locks on December 5, 2020, after obtaining approval by the police that they may do so. The respondents testified that no tenancy exists between themselves and the applicants, and that they were not aware that YC had moved out, or had sublet the home to the applicants. The respondents provided copies of the tenancy agreements entered between them and YC for a fixed-term tenancy from May 1, 2019 through to April 30, 2020, and a further 3 month term from May 1, 2020 through to July 31, 2020. The tenancy continued on a month-to-month basis after this last term. The tenancy agreements named YC as the

sole tenant. The respondents testified that the tenancy agreement produced by the applicants was a fraudulent one, and was not approved or signed by themselves. The respondents testified in the hearing that the signature of YC on the tenancy agreement provided by the applicants did not match the documents that they had provided. The respondents testified that they had no tenant-landlord relationship with the applicants, which is supported by the fact that they had only named YC as the tenant on the 10 Day Notice dated December 4, 2020. The respondents testified that the 10 Day Notice was served after they failed to receive the November 2020 rent from YC.

The respondents submitted translated messages sent by the applicant CH where the applicant states that she was “scammed out of \$10k Canadian Dollars by...and he ran away”. The respondents submit that their agents JS and JX only became aware of the situation after the 10 Day Notice was served. JS and JX attended the hearing and testified that they were not aware of any sublet arrangements, nor did they allow the tenant YC to sublet the property.

Analysis

RTB Policy Guideline #19 clearly provides the definition of a “sublet”, which states:

“Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant’s interest in the tenancy.

The sub-tenant’s contractual rights and obligations are as set out in the sublease agreement. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.”

“The sub-tenant typically pays rent to the original tenant; but even if he or she fails to do so, the original tenant’s responsibility to pay rent to the landlord is unaffected and the original tenant can be evicted if rent is not paid. Again, it should be noted that there is no contractual relationship between the original

landlord and the sub-tenant. In the event of a dispute, the sub-tenant may apply for dispute resolution against the original tenant, but likely not the original landlord, unless it can be shown there has been a tenancy created between the landlord and sub-tenant.

Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve some period of time at the end of the sublease, the agreement likely amounts in law to an assignment of the tenancy rather than a sublease; an arbitrator may make that determination in a hearing.”

In consideration of the evidence and testimony before me, I am not satisfied that the applicants have provided sufficient evidence to support that a sublease exists. Although the applicants in this dispute did submit a copy of a tenancy agreement naming the respondents as landlords, I am not satisfied that the evidence shows that they were aware of the agreement, nor did the respondents sign this document. I find that the only two signatures on the tenancy agreement were from a party identifying themselves as “YC” or “EC”. As noted by the respondents in the hearing, I find that the signature of YC or “EC” did not match the previous documents signed by the tenant YC, and I am not satisfied that the tenancy agreement dated September 1, 2020 was indeed signed by YC. Although I do not doubt that the applicants believe that they had a sublease arrangement with YC, I am not satisfied that one actually existed.

I now must consider whether an assignment had taken place.

RTB Policy Guideline #19 states the following about assignment of tenancy agreements.

B. ASSIGNMENT

Assignment is the act of permanently transferring a tenant’s rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. When either a manufactured home park tenancy or a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment. It is possible that the original tenant may be liable to the landlord under the original agreement.

For example:

- *the assignment to the new tenant was made without the landlord’s consent;*
- *or the assignment agreement doesn’t expressly address the assignment of the original tenant’s obligations to the new tenant in order to ensure the original tenant does not remain liable under the original tenancy agreement.*

Section 34 of the *Act* states that the tenant cannot assign or sublet the rental unit without the landlord's written consent. In this case, I find that the tenant YC did not assign the rental unit, as there was no assignment agreement signed between any of the parties, and the landlord respondents did not consent to any assignments.

In the absence of an assignment, I find that a tenancy had existed only between YC and the landlords. I am not satisfied that the landlords had entered into any tenancies with the applicants in this hearing.

As per Residential Tenancy Policy Guidelines 13 and 19 above, I find that the applicants have no rights or obligations under YC's original tenancy agreement. Although I am sympathetic to the fact that the applicants believe that they had entered into a contractual agreement, as stated above in the policy guideline, in the case of a sublease situation, "there is no contractual relationship between the original landlord and the sub-tenant".

In consideration of whether the applicants had a landlord tenant relationship, I am not satisfied that any written tenancy agreements were entered into, and signed by both the landlords and the applicants, nor am I satisfied that the evidence shows that an assignment was completed.

I am unable to consider this application as I find that there is no tenancy agreement between the applicants and the landlords. The applicants are not tenants under the definition of section 1 of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupants as a tenant. As I am not satisfied that the landlords had agreed to include the applicants as tenants in the tenancy agreement, the *Act* does not apply to their relationship. On this basis, I cannot consider the application as I have no jurisdiction in this matter.

Conclusion

I find that a tenancy does not exist between the applicants and the landlords in this matter. Accordingly, I decline to hear this matter as I have no jurisdiction to consider the application.

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: December 29, 2020