Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARAGON DEVELOPMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT, PSF**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72; and
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62.

The tenant LR attended the hearing, and the landlord was represented at the hearing by property manager, MJ ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution and the tenant acknowledged service of the landlord's evidence. Both parties stated they had no concerns with timely service of documents.

Preliminary Issue

The tenant named a property manager as the respondent to her Application for Dispute Resolution when the named landlord in the notice to end tenancy and on the tenancy agreement supplied as evidence was a corporate landlord. Section 64(3)(c) of the Residential Tenancy *Act* and Rule 4.2 of the Residential Tenancy Branch Rules of Procedure allow an arbitrator to amend an Application for Dispute Resolution should such corrections be required. In accordance with those provisions, I amended the tenant's application to reflect the landlord's name to the one shown on the cover page of this decision.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?
Can the tenant recover the filing fee?

Should the landlord be required to provide services and facilities as stated on the tenancy agreement or by law?

Background and Evidence

The parties came before the Residential Tenancy Branch for a dispute resolution hearing on October 22, 2019 regarding a notice to end tenancy and a decision was rendered by an arbitrator of the Residential Tenancy Branch on October 25, 2019. The file number for the previous arbitration is recorded on the cover page of this decision.

The issue of whether the tenant (LR) or her ex-boyfriend (CA) is the de facto tenant of the subject rental unit was addressed by that arbitrator. In the arbitrator's decision, the arbitrator determined that CA is the de facto tenant of the unit and that the landlord is estopped from claiming that the tenant sublet the unit to CA without authorization. The previous arbitrator found:

> *With respect to the third claim in the Notice, the parties agreed that about six years ago, the tenant sublet the unit without the landlord's consent to CA. The parties also agree that the landlord was informed of the sublet for six years and has submitted no documentary evidence of informing either the tenant or CA that the landlord objects to the tenancy. The landlord has accepted rent directly from CA. CA has performed work for the landlord for which he has been paid.*
>
> *I find that the legal principle of estoppel applies to this situation. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.*
>
> ***I find the landlord established a pattern of accepting rent from CA and acknowledging that CA was the de facto tenant of the unit**. I find the tenant and CA relied on this pattern and CA has lived there without notice of objection from the landlord for six years. **I find the landlord is estopped from now claiming that the tenant sublet the unit to CA without authorization and in violation of the lease.** (emphasis added)*

The landlord testified that the decision rendered by the previous arbitrator contained an error that they didn't seek a correction of within the timeframe for which they could seek a correction. The landlord submits that despite the arbitrator's findings, CA didn't pay rent for the unit and they therefore don't acknowledge CA as the tenant in the unit. The reason for not seeking the correction was because the previous management team participated in the hearing and the present landlord representatives did not catch it in time. The landlord acknowledges the time to seek a correction or clarification has now passed.

The tenant testified that she and CA remain good friends however she does not live in the subject rental unit. The applicant/tenant has not lived in the unit since she moved out in 2014. The applicant/tenant and her current boyfriend have a valid joint tenancy agreement with the landlord in a first floor unit. CA pays his own rent for the subject rental unit through a joint checking account which the applicant/tenant does not put money into.

The landlord personally served the tenant LR with a One Month Notice to End Tenancy for Cause ("notice") on February 18, 2021 and LR acknowledges receiving the notice on that date. On the notice, LR (not CA) is named as the tenant and the landlord specifies the LR's address is a unit on the first floor, not the subject unit on the fourth floor. The landlord seeks to end the tenancy with the named tenant LR, giving LR one month's notice to move out of the rental unit located on the fourth floor. The landlord testified that they have never recognized CA as the tenant in the subject fourth floor rental unit.

Analysis

Although the landlord has not acknowledged CA as the tenant of the subject rental unit on the fourth floor, an arbitrator of the Residential Tenancy Branch has already made a final, binding decision establishing this fact. The arbitrator further found that the landlord is estopped from claiming that the tenant LR sublet the unit to CA without authorization. The landlord did not seek a clarification, correction or review of the arbitrator's decision dated October 25, 2019 and as such, the decision stands.

As CA has been established to be the tenant of the subject fourth floor rental unit, and that the landlord is estopped from claiming that LR is the sublessor of the unit; the landlord's tactic of seeking to end the tenancy with LR as sublessor of the unit cannot succeed. The issue is barred by the legal doctrine of Res Judicata. The doctrine of *res judicata*, is Latin for "the thing has been judged". *Res judicata* prevents someone from re-litigating an issue that has already been determined by a competent jurisdiction.

Given these findings, I find the notice to end tenancy issued to the tenant LR is of no force and effect. LR is not the tenant of the subject rental unit on the fourth floor.

LR filed an amendment to her application seeking an order that the landlord provide services or facilities. In the amendment, LR seeks an order that the landlord restore CA's ability to buzz-in guests using his own phone line. As CA has been established as the tenant of the fourth floor rental unit and that LR is a tenant in a different unit, I find LR does not have the right to seek this order on behalf of CA. This portion of LR's application is dismissed without leave to reapply.

Lastly, the tenant LR seeks to recover the filing fee for this application. As LR was successful in cancelling the notice to end tenancy, the filing fee of $100.00 will be recovered from the landlord. Pursuant to section 72 of the *Act*, LR is to deduct $100.00 from one single rent payment due to the landlord.

Conclusion

The notice to end tenancy issued on February 18, 2021 is cancelled and of no further force or effect.

The application seeking the landlord provide services or facilities is dismissed without leave to reapply.

The tenant may deduct $100.00 from a single rent payment due to the landlord pursuant to section 72 of the *Act*.

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: May 20, 2021

Residential Tenancy Branch