Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for compensation equivalent to 12 months rent payable under section 51(2) of the Act.

Both the applicants and the respondent appeared for the hearing. In addition, the applicants were assisted by their daughter (referred to by initials TT) who was acting as their advocate. The respondent owner was assisted by her son. The parties were affirmed and the parties were ordered to not record the proceeding. I confirmed the parties had exchanged their respective hearing materials upon each other and I admitted the materials into evidence for consideration in making my decision. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary Issue – Naming of parties

The tenancy agreement was prepared by and signed by a property manager, on behalf of the owner. The owner had been identified as the landlord in issuing the *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") and had signed the 2 Month Notice. The applicants named the owner of the property as the landlord in filing this Application for Dispute Resolution. An owner of a property meets the definition of "landlord" under section 1 of the Act and it was the owner that brought the tenancy to an end in issuing a Notice to End Tenancy. As such, I was satisfied that naming the owner was appropriate.

I noted the name of the tenant on the tenancy agreement, and the person who signed the tenancy agreement as the tenant, was different than the applicant named on the Application for Dispute Resolution.

TT explained that the person named as the tenant on the tenancy agreement (herein referred to by initials AM) is her partner and he was named as the tenant on the tenancy agreement because of his good credit rating; however, the rental unit was occupied by her parents, the named applicants.

I instructed TT or the applicants to point to any other portion of the tenancy agreement, or any other document, that would identify the applicants as being recognized as tenants. TT pointed to term 4 of the tenancy agreement. Term 4 of the tenancy agreement is a term that lists all of the persons permitted to occupy the rental unit and it lists AM along with the applicants. I informed the parties that residing in or occupying a rental unit does not in itself create a tenancy agreement between parties and I was unsatisfied that term 4 serves to create a tenancy agreement between the applicants and the landlord.

TT stated that the property management company, with the agreement of the owner, had agreed that AM would be a guarantor and the applicants were the tenants in text messages, although the text messages were not submitted as evidence. TT also stated that the rent came from the applicants and the applicants were the ones who participated in the condition inspections with the landlord.

The owner stated that the property management company had handled the tenancy obligations on her behalf and she had no knowledge as to the decision behind entering into the tenancy agreement with AM. When the owner decided to end the tenancy so that her son may occupy the rental unit, the property management company prepared the 2 Month Notice, identifying AM as the tenant, and she signed it.

In deciding the identity of the tenant(s) I have relied upon the tenancy agreement, the 2 Month Notice, and emails from the property management company, as described in greater detail below.

The tenancy agreement names AM as the tenant and AM signed the tenancy agreement. Above the signatures of AM and the property manager are the following statements:

THIS DOCUMENT is intended to be a complete record of the rental Agreement. Both parties are to have a complete copy of this Agreement, Part I, Part II and Part III. All promises and Agreements must be included herein in writing and agreed to by both parties or they are not enforceable.

Given the above-described statements, I am of the view that any text messages TT referred to that pre-date the signing of the tenancy agreement would constitute parol evidence. Since the tenancy agreement is clear and complete, and not ambiguous, as to the identity of the tenant(s), I find it would be inappropriate to set aside the tenancy agreement to determine the identity of the tenants.

Also of consideration, is that there was no evidence of an assignment of the tenancy agreement the was done with agreement of all parties, including the written consent of the landlord, as required under term 7 of Part III schedule of the tenancy agreement. As such, I am unsatisfied the tenancy agreement was legally assigned to the applicants.

The 2 Month Notice prepared by the property management company and signed by the owner, identifies one tenant only, which is AM.

In emails sent by the property manager in October 2020, the salutation is addressed to AM, although TT responded to the emails, and the property manager continued to communicate with TT. In sending the email with the 2 Month Notice attached on November 16, 2020, the property manager addressed the correspondence to AM and the 2 Month Notice identifies AM as the tenant. in an email sent to TT on November 17, 2020, the property manager describes the “rightful tenant” as being AM and TT does not dispute or argue that statement in her emailed response.

I note that there was text message communication between the owner’s son and the female occupant before the tenancy ended; however, the nature of the communication pertained to measurements and service providers for things like internet. The nature of the communication is consistent with an anticipated future occupant asking questions of an outgoing occupant and I find the communication does not establish formation of a tenancy between the applicants and the landlord.

In light of all of the above, I find I am unsatisfied that the applicants have standing as tenants and I decline to hear their claim made against the owner under the Act.

During the hearing, it was apparent that both the applicants and the respondents wished to proceed to have this case heard even though I informed the parties that I was unsatisfied the applicants had standing as tenants. I declined to do so as any order I

may issue would be unenforceable if the correct parties are not named. As provided under Residential Tenancy Policy Guideline 43: *Naming of parties*, it states, in part:

> *Parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named.*
>
> *If any party is not correctly named, the director's delegate ("the director") may dismiss the matter with or without leave to reapply. Any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable.*

Having concluded the applicants do not have standing as tenants and having declined to hear the matter further, I informed the parties that AM is at liberty to file a claim against the landlord/owner if AM decides to pursue the matter.

Conclusion

The applicants do not have standing as tenants and I declined to hear the matter. Any future claim against the landlord/owner may be made by the party who had standing as the tenant.

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 21, 2021

Residential Tenancy Branch