



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1110008 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNDC MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 22, 2021, and August 23, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent; and,
- authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Hearing of August 23, 2021

The Landlord named on this application was a numbered company which was represented at the hearing by three individuals, a shareholder of the company, T.K., an agent, E.T., and legal counsel. One of the Tenants, S.S., also attended the hearing with their legal counsel. All parties provided affirmed testimony.

Preliminary Matters

During the first hearing, on April 22, 2021, several issues were raised with respect to service of the hearing documentation and evidence. As a result, that hearing was adjourned and both parties were ordered to re-serve and submit their evidence prior to the second hearing. At the second hearing, on August 23, 2021, the Tenants raised the issue of jurisdiction, and asserted that the Landlord as named on this application does not have the legal authority to bring this application forward, as he is not the owner of the property, and he is not a "Landlord", as defined by the Act. The applicant/Landlord

claimed to have a master agreement with the owner of the property (the head lease), and in turn rented out the rental unit to the Tenants, lawfully, as a Landlord under the Act. However, the Landlord did not provide a copy of any of the supporting documentation or a copy of this head lease. Given this, I adjourned the hearing on August 23, 2021, to allow for the applicant to submit a copy of the head lease document, serve a copy to the Tenants, and to allow both parties to provide submissions with respect to whether or not this is a Landlord/Tenant relationship, and whether or not I have jurisdiction to hear the matter brought forward.

Preliminary Matter - Jurisdiction

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issue regarding jurisdiction. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Landlord provided a copy of the head lease agreement, as requested, and both parties provided written submissions on the issue of jurisdiction.

The Head Lease

The head lease identifies the “Landlord” as a numbered company. As per the documentary evidence provided by the Tenants (witness statement dated August 11, 2021 from A.J) this company is owned by A.J. The house was owned by A.J. (as the sole director and officer) through his numbered company since 2007. The head lease also identified the “Tenant” as “[T.K.’s numbered company] FOR S.S.” The head lease is signed by A.J. for his numbered company as the “Landlord”, and also signed by T.K. under the “Tenant” field with a similar notation as at the start of the head lease which was “[T.K.’s numbered company] FOR S.S ”. This head lease was set to start December 1, 2017, and run until November 30, 2019 for \$11,000.00 per month. In the addendum, the S.S. and N.R. (and family) were the only authorized occupants.

The Secondary Lease

T.K. subsequently entered into a secondary tenancy agreement whereby he identifies his numbered company as the “Landlord”, and S.S, and N.R. as the Tenants (the Tenants as named on this application). This secondary lease was set to start of December 1, 2017, and end on November 30, 2019, with monthly rent of \$14,900.00.

This agreement was signed by T.K. on behalf of his numbered company as well as both “Tenants”.

Landlord’s submissions on Jurisdiction

The Landlord’s counsel submitted that there are two tenancy agreements, the first being the head lease document (the “head lease”) between the owner of the property, and T.K., and a second tenancy agreement between T.K.’s numbered company and the “Tenants”, S.S. and N.R. The Landlord’s counsel argued that there is a sublease agreement between the Landlord’s company and the “Tenants” named on this application, and that T.K. had the legal authority to re-rent the unit to the “Tenants” as a sublease. The Landlord’s counsel argued that this makes T.K.’s numbered company a “sub-Landlord” and it also makes the Tenants, N.R. and S.S., “sub-Tenants”.

The Landlord’s counsel also argued that the head lease clearly states that the T.K.’s numbered company is a tenant of the owner and the sublease clearly states that the Tenants named on this application are “Tenants” of the T.K. and his company. The Landlord’s counsel argued that T.K. was never formally acting as an agent for the owner, but rather as an independent Landlord, with his own company. However, no written agency contract between the owner and the T.K./his company was produced for this proceeding.

T.K. denies that he was acting as an agent for the owner, whereas the owner and Tenants assert that the Landlord may have been acting as an agent for the owner, rather than as a Landlord with legitimate possessory rights to the property. However, no agreement or agency contract was produced to sufficiently demonstrate that the Landlord was an agent for the owner.

The Landlord’s counsel asserts that the nature of this living arrangement does not qualify as a commercial tenancy, as no business was operated at this rental property, and it was purely used for residential purposes, as supported by the two tenancy agreements provided into evidence, and the absence of commercial activity at the property.

Having reviewed this matter, I note the N.R. and S.S. are the ones who occupied this rental unit, and it is their use which largely dictates the nature of the tenancy. I note their use appears to be primarily residential in nature. I find there is little to no evidence that the rental unit was used by S.S. and N.R. in a non-residential manner. I find it more likely than not that this was a residential tenancy, not a commercial tenancy.

The Landlord's counsel further argued that the affidavit provided by the owner, in support of the Tenants should be inadmissible due to it being unsworn. However, as per section 75 of the Act, the Rules of Evidence do not apply, and this evidence may be admitted, provided it is necessary, appropriate and relevant. I find it is necessary, appropriate and relevant as it directly relates to the issue at hand.

The Owner's Statement

As a sole director and owner of the corporation which owns the rental property, A.J. provided a witness statement which summarizes that he is the sole owner and director of a company which owns this rental unit, and has been since 2007. A.J. explained that he viewed T.K. as his agent as he was the one to find renters, and keep approximately 10% of the rent. A.J. did not provide any contract or written agreement showing the nature of his agency relationship with T.K. A.J. is now realizing that T.K. has filed this claim against S.S. and N.R. and he feels there is no basis for it. A.J. Stated he was not expecting any further rental amounts and opined that there is no basis for the claim for damages. A.J. asserts this claim has been filed without his knowledge or authorization.

The Tenants' Submission on Jurisdiction

S.S. and N.R. (the Tenants named on this application) and their legal counsel argued that our office lacks the jurisdiction to hear this application because the Landlord, as named on this application, was only a rental agent for a period of time for the owner (during the material time), and is not an owner or a "Landlord" under the Act. The Tenants' counsel argued that T.K., the Landlord named on this application, filed this application, without being an actual "Landlord" under the Act, or agent of, and without the knowledge or authorization of, the actual owner of the rental unit.

The Tenants' counsel stated in their written submissions that T.K. works in the rental management business, and has for many years. The Tenants' counsel asserts that because T.K. does not have a real estate licence anymore, he is trying to avoid being labelled as an agent. The Tenants' counsel stated that despite the fact that T.K. does not have a valid real estate licence, he was hired by the owner as an agent. The statement from the owner is that he used T.K., the Landlord as named on this application, as a rental agent for several years, finding renters, and retaining a percentage of the rent.

The Tenants' counsel argued that the owner never agreed to have T.K. or his numbered company, the Landlord as named on this application, as a "Tenant", as is being suggested by the head lease. The Tenants' counsel asserts that prior to this hearing, they were unaware of the head lease's existence, and allege that it was fraudulently created and is legally incorrect. The Tenants pointed out that the head lease purports to be an agreement between the owner, and SS and NR. SS and NR deny that they ever authorized the TK's or his numbered company to sign the head lease with the owner, on their behalf.

The Tenants' counsel pointed to the head lease document and noted that under the "Tenant" portion of the agreement, it states "[T.K.'s numbered company] FOR S.S.". The Tenants' counsel argues that this implies that T.K. signed this document on behalf of one of the Tenants, S.S, even though there was no authorization to do so. As such, the Tenants' counsel asserts that the Landlord as named on this application is not actually a "Landlord", as this head lease document is invalid and unenforceable.

The Tenants' counsel argued that T.K. is now attempting to use the fact that he improperly inserted the SS's name on the head lease to assert his rights under the Act. The Tenants' counsel asserts that there was no valid sub-tenancy or sub-lease, since T.K., in his capacity as Director and Shareholder of the applicant, signed the head lease "for" the Tenants, without any authorization to do so. Further, The Tenants' counsel asserts that there is no sublease, as contemplated by the Act, between them and T.K. or his numbered company, because there was no subsisting tenancy agreement (which the applicant purports the head lease to be) between T.K. and the owner. The Tenants' counsel pointed to the head lease to show that it was not actually an agreement between the owner and the T.K. Also, the Tenants' counsel asserts there is no written consent from the owner for T.K. to enter into a secondary sublease arrangement with the Tenants, and the Landlord never occupied or intended to occupy the rental unit. Further, they argue that this is not a valid sublet, under the Act, because the term of the "sublease" was not shorter than the head lease.

The Tenants claimed T.K. is using the RTB process to assert a false claim against them for rent that isn't owed, and damage that never occurred. The Tenants counsel pointed to the statement made by the owner that he does not feel he is not owed any money from the Tenants for rent or damages. In summary, the Tenants assert that T.K. and his numbered company, the "Landlord" as named on this application, was not the Tenant of the owner(as the head lease indicates it signed on behalf of the tenants), nor was he the sub-landlord of the Tenants (as he had no possessory right to the rental unit and as

the tenancy does not meet the conditions for a sub-lease set out in the Act) either in substance or in law, which precludes him from filing this application.

I have reviewed and considered the parties submissions, and evidence with respect to jurisdiction. First, I turn to the head lease document provided into evidence. I note the owner's numbered company is listed as the "Landlord". The owner provided a statement to confirm this as well as a corporate summary document. Under the head lease, the Tenant is named as "[T.K.'s numbered company] FOR S.S." I agree with the Tenants' counsel's submission that this implies that the head lease was signed by the T.K.'s numbered company on behalf of one of the Tenant, S.S. However, there is insufficient evidence to show T.K.'s numbered company was authorized to act as S.S.'s agent and sign this agreement on his behalf. I do not accept the Landlord's submission that the head lease document was between the owner, and himself (or his company). I find the nature of the way the Tenant was named on the head lease is problematic and I do not find the Landlord, as named on this application, was a tenant under the head lease, such that he could in turn act as a Landlord and re-rent the unit to the Tenants named on this application.

I find the head lease agreement, as written, was between the owner, and the person named as the Tenant on this application. However, I find this head lease agreement is a nullity, as there is insufficient evidence that the person named as the Landlord on this application had any legal authority to enter into the head lease on behalf of the Tenant, S.S. In turn, the secondary tenancy agreement that was signed between T.K.'s numbered company and the Tenants is also a nullity, as T.K. did not have any possessory rights, given he was not the "Tenant" on the head lease, such that he could enter into any subsequent sublease or secondary tenancy agreements with other prospective tenants.

I note the owner of the rental unit has stated that he does not support this application, and that it has no basis. I find that T.K. and his numbered company (the Landlord as named on this application) is not actually a "Landlord" under the Act, and does not have any the ability to bring this application forward, based on above reasons, which include the structure of the tenancy agreements, and the lack of support from the owner of the unit. I decline jurisdiction to hear this matter.

As stated above, I find it more likely than not that this was a residential tenancy, rather than a commercial tenancy, and although S.S. and N.R.'s living arrangement and use of the rental unit may be covered under the Act, any potential implied tenancy between the owner and S.S. and N.R. would likely need to be decided when and if an application

was made by either of those parties. Given it is not relevant to my findings on jurisdiction, and the fact that T.K. does not have the legal authority to bring this application forward as a “Landlord” under the Act, I decline to make any formal findings on that matter.

Given my findings thus far, I find the next hearing, set for December 13, 2021, is not required. This application is dismissed, in full, 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: September 28, 2021

Residential Tenancy Branch