



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

The hearing was scheduled in response to the Application for Dispute Resolution, in which the Applicants applied to set aside a Two Month Notice to End Tenancy and to recover the fee for filing this Application for Dispute Resolution.

The male Occupant stated that on May 26, 2021 the Dispute Resolution Package was sent to the Owner, via registered mail, at the service address noted on the Application. Legal Counsel for the Owner acknowledges the Application for Dispute Resolution was served to the Owner, although he does not know how/when it was served.

In May, July, and September of 2021 the Occupants submitted evidence to the Residential Tenancy Branch. The male Occupant stated that all of this evidence was delivered to the Owner's service address on September 07, 2021. Legal Counsel for the Owner acknowledged receipt of this evidence. Legal Counsel stated that the Owner has had sufficient time to consider the evidence. As the Owner has had sufficient time to consider the evidence, it was accepted as evidence for these proceedings.

In August and September of 2021, the Owner submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Owner stated that this evidence was not served to the Occupants. As the evidence was not served to the Occupants, it was not accepted as evidence for these proceedings.

Legal Counsel for the Owner asked if the Owner's evidence could now be emailed to the Occupants. This request was denied, as it would not meet the service deadlines established by the Residential Tenancy Branch Rules of Procedure.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct spelling of the Owner's first name, as provided at the hearing by the Owner.

Issue(s) to be Decided

Do I have jurisdiction over this dispute and, if so, should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Owner and the Owner's Tenant agree that:

- They entered into a written tenancy agreement, the fixed term of which began on December 01, 2018 and ended on December 31, 2020;
- They agreed that the Owner's Tenant would live in a portion of the residential property and that she could sub-let rooms to other occupants;
- In the event the Owner's Tenant did not pay rent to the Owner, however if she collected rent that exceeded \$5,000.00 per month, the "excess rent" would be paid to the Owner;
- The Owner's Tenant never collected rent in excess \$5,000.00 per month and, as such, never paid rent to the Owner;
- The Owner was obligated to pay all maintenance and repair costs for the rental unit;
- They have a written tenancy agreement, which was submitted to the Residential Tenancy Branch but was not accepted as evidence for these proceedings; and
- Their tenancy ended in May of 2021.

The Owner's Tenant stated that:

- She lived in one room of the residential complex;
- She rented rooms to the Occupants;
- She entered into a written tenancy agreement with the Occupants for a fixed term that began on April 01, 2019;
- The fixed term of this tenancy agreement ended on March 31, 2020;
- The Occupants agreed to pay monthly rent of \$850.00;
- The Occupants initially referred to her as the "manager" but were subsequently advised that she was the "landlord";
- She was living in the residential complex prior to the Occupants moving into the complex;
- She moved out of the residential complex in May of 2021;
- The Occupants were still living in the residential complex when she moved out of the unit;
- She collected rent from the Occupants until May of 2021;
- On April 26, 2021 she sent the Occupants an email, in which she informed them the Owner planned on selling the residential property; and
- On April 28, 2021 she sent the Occupants an email, in which she informed them the Owner planned on moving into the residential property.

The female Occupant stated that:

- They were not aware of a tenancy agreement between the Owner and the Owner's Tenant;
- They entered into a written tenancy agreement with the Owner's Tenant for a fixed term that began on April 01, 2019;
- The fixed term of the tenancy agreement ended on March 31, 2020;
- They agreed to pay monthly rent of \$850.00 to the Owner's Tenant;
- She understood the Owner's Tenant did not own the residential complex, but she understood that the Owner's Tenant was the "person in charge";
- The Owner's Tenant subsequently informed her that she was the "landlord", not the "manager";
- The Owner's Tenant lived in the residential complex;
- The Owner's Tenant was living in the residential complex prior to the Occupants moving into the complex;
- The Owner's Tenant moved out of the residential complex in May of 2020;
- They are still living in the residential complex;

- They paid rent to the Owner's Tenant until May of 2021;
- After May of 2021 they attempted to pay rent to the Owner, but she refused to accept rent from them;
- The Owner never gave them oral or written permission to reside in the rental unit;
- On April 26, 2021 the Owner's Tenant sent them an email, in which she informed them the Owner planned on selling the residential property; and
- On April 28, 2021 the Owner's Tenant sent them an email, in which she informed them the Owner planned on moving into the residential property.

The male Occupant stated that:

- they did not know they were sub-tenants until April 29, 2021; and
- the Owner has only stayed overnight in the residential complex for two nights since September 01, 2021.

The Owner stated that:

- The Occupants periodically attempted to pay rent to them after May of 2021, which she refused to accept;
- She never entered into an oral or written tenancy agreement with the Occupants;
- She moved into a portion of the residential complex on September 01, 2021 and she has slept there approximately 10 nights since that date.

The Owners and the Occupants agree that:

- On April 29, 2021 a Two Month Notice to End Tenancy for Landlord's Use was personally served to the male Occupant; and
- The Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by September 30, 2021.

Analysis

On the basis of the undisputed evidence, I find that:

- The Owner and the Owner's Tenant entered into a tenancy agreement for the residential complex;
- The tenancy agreement between the Owner and the Owner's Tenant was for a fixed term, the fixed term of which began on December 01, 2018 and December 31, 2020;
- The tenancy between the Owner and the Owner's Tenant ended in May of 2021;

- The Owner's Tenant and the Occupants entered into a tenancy agreement for a portion of the residential complex;
- The tenancy agreement between the Owner's Tenant and the Occupants was for a fixed term, the fixed term of which began on April 01, 2019 and ended on March 31, 2020;
- The Occupants agreed to pay monthly rent of \$850.00 to the Owner's Tenant;
- The Owner and the Occupants have never entered into an oral or a written tenancy agreement for the rental unit;
- The Owner's Tenant lived in the residential complex with the Occupants for a period of time.

Residential Tenancy Branch Policy Guideline #19, with which I concur, reads, in part:

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement. (Emphasis added)

.....

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. (Emphasis added)

.....

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. (Emphasis added)

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act. (Emphasis added)

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation. (Emphasis added)

If I accept the testimony of the Owner's Tenant, who stated that she moved out of the residential complex in May of 2021, I would conclude that the Occupants were occupying the residential complex as occupants or roommates of the Owner's Tenant until such time as the her tenancy ended in May of 2021. In this event, they were occupants or roommates for the duration of the time they lived in the residential complex, in which case the Occupants had no rights or responsibilities under the Act.

Regardless of the fact the Tenant's Owner and the Occupants signed a tenancy agreement, if the Tenant's Owner lived in the residential complex until she ended her tenancy in May of 2021, they did not enter into a landlord/tenant relationship. The Tenant's Owner could not be considered a landlord if she was living with the Occupants,, as section 1(c) of the *Residential Tenancy Act (Act)* defines a landlord as "a person, other than a tenant occupying the rental unit", who is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit.

In the event the Owner's Tenant permitted the Occupants to live in the residential complex as roommates or occupants, their right to remain in the rental unit ended when the tenancy between the Owner and Owner's Tenant ended.

If I accept the testimony of the female Occupant, who stated that the Owner's Tenant moved out of the residential complex in May of 2020, I would conclude that the Occupants were occupying the rental unit as occupants or roommates of the Owner's Tenant for the first 12 months of the tenancy, while the Owner's Tenant was living with them in the complex. In the event the Owner's Tenant vacated the rental unit in May of 2020, I find that she would have become the sub-landlord and the Occupants would have become sub-tenants on the basis of the tenancy agreement signed by those parties.

Even if the Occupants became sub-tenants after May of 2020, their right to occupy the rental unit ended when the tenancy agreement between the Owner and the Owner's Tenant ended because the Owner's Tenant no longer had the right to grant them authority to live in the residential complex.

Regardless of whether the Occupants were occupying the rental unit as occupants/roommates or sub-tenants, they did not enter into a contractual relationship with the Owner at any time. In reaching this conclusion I was influenced by:

- The undisputed testimony that the Owner and the Occupants did not enter into a verbal or written tenancy agreement;
- The undisputed testimony that the Owner has never agreed to accept rent from the Occupants; and
- The undisputed testimony that the Owner has never accepted rent from the Occupants.

The *Act* grants tenancy rights and obligations to landlords and tenants. As the Occupants and the Owner have never entered into a tenancy agreement, I find the *Act* does not apply to these parties in these circumstances. As the parties do not have a tenancy agreement, the Owner does not have the right to end the tenancy pursuant to section 49 of the *Act*.

I have been granted authority to consider tenancy disputes between landlords and tenants. As the Occupants and the Owner have never entered into a tenancy agreement, I find that I do not have jurisdiction over their relationship.

At the hearing the parties were advised that I would be granting an Order of Possession if I dismissed the application to set aside the Two Month Notice to End Tenancy for Landlord's Use. This information was provided pursuant to section 55(1) of the *Act* which requires me to grant an Order of Possession if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the landlord's notice to end tenancy complies with section 52, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The information provided at the hearing regarding the Order of Possession was incorrect. I am unable to grant an Order of Possession in these circumstances, as I do not have jurisdiction over any dispute between these parties.

Conclusion

As the *Act* does not apply to these parties, I do not have jurisdiction in this matter. I therefore dismiss the Application for Dispute Resolution.

For the benefit of both parties and for the benefit of the police or any other person of authority asked to intervene in this matter, the Occupants do not have a tenancy agreement with the Owner, they are not currently occupying the residential property pursuant to the *Residential Tenancy Act*, and they do not have a right to remain in the residential property pursuant to the *Residential Tenancy 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 *Act*.

Dated: September 21, 2021

Residential Tenancy Branch