



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, AAT, FFT

Introduction

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

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 30;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the landlords provide services or facilities required by law pursuant to section 65;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenant attended the hearing with her representative, BT. The landlord attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlords confirmed, that the tenant served the landlord with the notice of dispute resolution form by posting it on the office door. Other than the application, the tenant submitted no additional documentation. The applicant will be referred to as "AS" and the deceased tenant as "TM". The landlord did not serve the tenant with his evidence, which consisted of a site map and the written Two Month Notice with an outline of the verbal agreement between the deceased tenant and the landlords. The documents were read into evidence and not contested by the AS.

At the outset, I advised the parties of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing.

I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Issues to be Decided

Is the tenant entitled to:

- 1) an order that the landlord comply with the Act;

- 2) an order to allow access to or from the rental unit or site for the tenant or the tenant's guests;
- 3) an order to the landlord provides services or facilities required by law;
- 4) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The landlord entered into a verbal month- to- month tenancy agreement starting twelve (12) years ago with TM. Current monthly rent is \$2000.00 payable on the first of each month. No security deposit was taken. The premises were to be used for business purposes only. On November 1, 2021, the landlord issued TM a Two Month Notice to vacate the premises by December 31, 2021. TM died shortly after the notice was issued. .

AS testified that about 12 years ago, TM entered into a tenancy agreement with the landlord to rent the "shed" or "warehouse" on the landlord's property. The property operates as a mill, and TM rented the warehouse, which was not being used by the landlords, to run his mechanic shop. TM was never employed by the mill. AS states that the warehouse was also a "residence". AS stated that she moved in with TM about nine (9) years ago. TM, without the landlord's consent, converted part of the warehouse into a residence, installing plumbing, a stove, and a fridge. They were living in the mezzanine of the building.

Rent started at \$900.00, increased to \$1500.00 and currently is set at \$2000.00 per month. AS testified that there are no rental arrears. Since November 2021, rent is paid through TM's estate.

AS testified that TM received a type written two-month notice from the landlord while in the hospital. AS stated she was willing to move, and in fact has moved. She moved off the premises before January 1, 2022 and is living in a "slum motel" because the landlord has blocked access to the property and the residence. The landlord has shut power off, the gate is blocked, lumber has been piled up around the warehouse, and she has been warned to not trespass. She is worried that her two (2) cats may be locked in the residence. She testified that the landlord did allow "probate" to remove car parts and cars and tools that were stored in the warehouse.

The landlord confirmed that he provided a Two-Month Notice on November 1, 2022, to TM, the tenant. The landlord states that the warehouse was never intended to be a residential property stating that the warehouse has no toilet or running water. Further, as the municipal map confirms, the property is zoned for "commercial/agricultural" use not residential. He testified he was unaware that TM converted part of the warehouse

into a residence, stating that the arrangement he had with TM was that TM conducted his mechanic business after mill business hours thus they mostly saw each other in passing. The landlord testified that TM lived in a trailer, parked on a neighboring property, that he believes may have been damaged by a falling branch from a tree awhile back.

The landlord testified that after TM's death, problems with AS started. One day in December, he arrived on his property to find that AS had cut through the lock on the gate and about a dozen people were on the property loading items out of the shop into trucks. The landlord called the police, but by the time the police arrived, AS and the dozen people had left. She left the shop doors wide open. The police recommended the landlord seal up the building to prevent break-ins, which he did, with lumber. The landlord, with police assistance, had a discussion with Angela about trespassing.

The landlord states that the shop is a mess, with garbage strewn both inside and outside. The landlord is working with the executor of the will (TM's daughter) to have the remaining items in the shop removed. AS is not named as a beneficiary in the will.

The landlord states no rent has been paid for November, December, January, and February. The landlord said that even prior to the current rental arrears, TM more often than not, paid the rent late. The landlord stated there were four (4) not two (2) cats in the shop and the cats are fine and living on the premises.

It is the landlord's affirmed testimony that the only tenancy agreement that existed, existed between TM and the landlord. TM was responsible for the rent and paid the rent. AS was an occupant only; never a tenant. No tenancy agreement, verbal or otherwise, was entered into between AS and the landlord. TM never approach the landlord to renegotiate the oral tenancy agreement to include AS as a tenant.

AS responded to the landlord's testimony stating that the landlord was fully aware that TM and AS were living on the property. AS testified that rent was always paid on time and AS and TM respected the rules set by the landlord and conducted business after 4 p.m.

AS confirmed that she and about a dozen friends accessed the property to remove various items from the warehouse such as car parts, tools, etc. AS states these items belong to her because they were acquired jointly by TM and AS. AS stated there is a dispute about legal beneficiaries to TM's estate and alleges the will has been forged. BT intervened in AS's testimony stating that the beneficiary dispute was not relevant to the hearing. The hearing is about gaining access to the residence. BT wanted "two-months unfettered access" to the property as a settlement agreement.

Analysis

AS applied for orders requiring the landlord to:

- comply with the *Act*;
- allow access to or from the rental unit or site for the tenant or the tenant's guests;
- provide services or facilities required by law

AS did not dispute the Two Month Notice issued by the landlord. As this issue is not before me, I make no finding regarding the form and content of the Notice. My decision is limited to the above referenced issues identified in the application.

The landlord and AS confirmed that the landlord entered into a tenancy agreement with TM about twelve (12) years prior to his death.

"Tenancy agreement" is defined in s. 1 of the *Act*. Tenancy agreement "*means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.*"

"Tenant" is defined in s. 1 of the *Act* as follows:

"*tenant*" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

Black's Law Dictionary (8th edition) expands on the *Act*'s definition: "tenant" is "*one who pays rent for the temporary use and occupation of another's land under a lease or similar arrangement*". [emphasis added]

The landlord testified that the original oral agreement between TM and the landlord was the sole agreement between the parties in place over the last twelve (12) years. TM never renegotiated the terms of the tenancy agreement to include AS as a co-tenant. The landlord argues that AS was an occupant only.

To clarify the rights and obligations of tenants, co-tenants, and occupants, I refer to Policy Guideline (PG) #13, "Rights and Responsibilities of Co-tenants", specifically subsection "H".

Subsection "H", "Occupants", reads, in part:

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. [emphasis added]

For the *Act* to apply there must be a tenancy agreement, (verbal or written) between “landlord” and “tenant” for a “rental unit”. Based on the affirmed testimony of the parties, there is insufficient evidence to conclude AS has any type of direct contractual or legal relationship with the landlord. The only legal or direct contractual relationship was between TM and the landlord.

In further support of an “occupant” vs “tenant” designation is the fact that although rent has not been paid since November 2021, the landlord has not asked AS to pay the outstanding rent, issued a 10-Day Notice for Unpaid Rent, or made a Direct Request for the rental arrears naming AS as tenant. As PG #13 states an occupant has neither rights nor obligations pursuant to the tenancy agreement. That tenancy agreement bound TM and the landlord.

Based on my review of the evidence, I am unable to conclude that AS was a “tenant” as contemplated by the *Act*. I find that AS was an “occupant” and as such has “no rights or obligations under the tenancy agreement”. The applicant’s application is dismissed in full, without leave to reapply.

As the application was unsuccessful, the applicant is not entitled to reimbursement of the filing fee.

Conclusion

The applicant’s claim is dismissed in full without leave to reapply. The applicant is not entitled to reimbursement of the filing fee.

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: February 16, 2022

Residential Tenancy Branch