



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE, FFT

Introduction

The Applicant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) for the cancellation of a notice to end tenancy, the Landlords’ compliance with the legislation and/or the tenancy agreement, and a restriction on the Landlords’ entry into the rental unit. Additionally, they applied for recompense of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) on April 4, 2022. In the conference call hearing I explained the process and provided each attending party the opportunity to ask questions.

The Applicant and Respondents (hereinafter the “Respondent” via their agent) both attended the hearing, and I provided the opportunity for each to present oral testimony and make submissions during the hearing.

Preliminary Issue – Jurisdiction

The Notice of Dispute Resolution lists the Respondent as the Landlord in this matter. The Respondent reiterated in the hearing they have no contractual relation with the Applicant here; rather, the Applicant was the roommate of the former tenant who stopped living in the rental unit in 2021. The former tenant signed a Mutual Agreement to End the Tenancy with the Landlord. The Respondent ensured this jointly-signed document was in the evidence during the hearing time and I confirmed at the end of the hearing I had received that document.

The former tenant and the Respondent entered a tenancy agreement on May 1, 2017. This was for the upper portion of the home for \$1,900. In April 2021 this rent amount increased to \$2,800 when the former tenant took on the whole home on the rental property, both upstairs and downstairs. The former tenant moved out in April 2021; however, they continued to manage the payment of rent on behalf of the occupants who remained in the rental unit, including the Applicant here. They advised the Respondent they wished to end this arrangement, and by September 2021 they were effectively not considered a tenant by the Respondent anymore; however, they did not formally end the tenancy.

The Applicant in the hearing provided they still reside in the rental unit upper part, while a different person occupies the lower basement part. This was a living arrangement in place since

approximately 2020. The Applicant stated in the hearing they were planning to move out from the upstairs part of the rental unit.

The Respondent issued a 10-Day Notice to End Tenancy for unpaid rent (the “10-Day Notice”) on February 14, 2022. This was for accumulated rent amounts and utility amounts owing, continuing from December 2021. The Applicant indicated they were paying rent in accordance with their upstairs-only arrangement. They presented a letter from the Respondent, undated, authorizing January and February 2022 as rent-free with the agreement that the Applicant would move out from the rental unit on February 28, 2022.

In the hearing the parties explained their position in this matter. The Applicant relies on the Respondent’s note to them giving two months rent free with the tenancy ending on February 28, 2022. This is why they remain in the rental unit and had not paid rent for those two months and also why they applied to dispute the Respondent’s 10-Day Notice. The Respondent wishes to rely on the Mutual Agreement to End the Tenancy they signed with the former tenant, submitting that the tenancy should formally end, with an Order of Possession to them in line with this.

The *Act* defines the term ‘landlord’ as follows:

“**landlord**”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner’s agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement,
 - or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement

The *Act* defines “tenancy agreement” as

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 license to occupy a rental unit.

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time.

Here, the former tenant had a tenancy agreement with the Respondent. That was the proper landlord-tenant relationship. By way of the Mutual Agreement to End the Tenancy signed by these parties on February 18, 2022, I find the tenancy has ended. As a measure of surety to the Respondent, I issue an Order of Possession in line with that agreement. The Order of Possession specifies the former tenant and any other occupant on the premises must deliver full and peaceable vacant possession of the rental unit to the Landlord who is the Respondent here.

There is no evidence that the Applicant here was party to the tenancy agreement. The definition of “landlord” in the *Act* does not support a landlord/tenant relationship between the Respondent and the

Applicant here. The Applicant here was an occupant and roommate, with no rights or responsibilities under the *Act*.

The *Act* s. 2 specifies that it applies to tenancy agreements, rental units, and other residential property. I find the Applicant here is not a tenant of the Respondent; therefore, I decline jurisdiction on this matter because the *Act* does not apply in this situation.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, without leave to reapply.

In line with the Mutual Agreement to End the Tenancy effective February 18, 2022, I grant an Order of Possession to the Landlord, effective **two days after they serve it to the occupants at the rental unit**. Should the Tenant or other occupants fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 5, 2022

Residential Tenancy Branch