Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN HOUSE ACCOMODATIONS LTD. & PORTE COMMUNITIES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction and Preliminary Matters

On March 21, 2022, the Tenant applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the "*Act*") and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. E.R. attended the hearing as well, with W.M. attending as another party related to the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Submissions were made by the parties regarding jurisdiction, as the Tenant was unsure of who was his Landlord. It was determined that E.R. originally rented the property, and then sublet room # 4 of the rental unit to the Tenant. As W.M. was a representative of the company that originally rented the property to E.R., she was effectively his landlord. As such, her company does not have a landlord/tenant relationship with the Tenant. Consequently, this company's name was removed as one of the Respondents on the Style of Cause on the first page of this Decision. Furthermore, as it was determined that her company had no relationship with the Tenant, she was asked to exit the hearing.

Moreover, when submissions were made regarding what other names should be noted as a Respondent on the Style of Cause on the first page of this Decision, it was the Tenant's position that the company name of E.R. should also appear. However, E.R. advised that this company has nothing to do with the tenancy and should not be named as a Respondent. It should be noted that throughout the hearing, E.R. would

occasionally advise that he had difficulty understanding English. However, a letter signed by him, dated October 26, 2021, was read to him verbatim, where he wrote "Please accept this letter as an official notice to end your tenancy with E.R. [sic] (Green House Accommodations) for the above noted address." When he was asked to explain why he would write this in his letter if this company had nothing to do with the tenancy, he would then claim that he did not understand or know why it was in there.

Firstly, it does not make any logical sense why he would include this company name in his letter if it had nothing to do with this tenancy. I find that this claim is absurd and is not consistent with common sense. Secondly, I note this because throughout the hearing, it appeared as if he would claim not to understand English only when it was convenient for him to maintain an appearance of ignorance to this situation. I find that his dubious and non-sensical testimony cause me to question his credibility on the whole. As such, I am satisfied that this company, and E.R., are Respondents, and I have amended the Style of Cause to reflect this.

The Tenant advised that he served E.R. with the Notice of Hearing package and some evidence by registered mail on March 24, 2022. As well, he stated that he served E.R. with additional evidence by registered mail on May 2, 2022. E.R. confirmed that he received these packages. As these packages were served in accordance with Sections 89 and 90 of the *Act*, and pursuant to the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Tenant's documentary evidence and will consider it when rendering this Decision.

E.R. advised that he served the Tenant with his evidence package by registered mail on May 11, 2022, and the Tenant confirmed that he received this package. Based on this undisputed testimony, I am satisfied that the Landlord's evidence has been served in accordance with the timeframe requirements of Rule 3.15 of the Rules. As such, I have accepted all of the Landlord's documentary evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order to comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2021, that rent is currently established at $800.00 per month, and that it is due on the first day of each month. A security deposit of $400.00 was also paid.

In the details of the Tenant's dispute, he indicated that he rented the rental unit from E.R. and that he was never informed that he was a subtenant. Moreover, E.R.'s landlord was applying for an Order of Possession of the rental unit.

When reviewing this Application, clearly a determination of jurisdiction needs to be established.

E.R. confirmed that he originally rented the rental unit, and that he had permission from his landlord to sublet parts of the rental unit. Moreover, he confirmed that he did not occupy the rental unit, but he re-rented the rooms as part of some business that he operates. Furthermore, he acknowledged that he collected rent and a security deposit from the Tenant, and that he was, by definition, a Landlord to the Tenant under the *Act*. Despite this knowledge, he did not create a written tenancy agreement with the Tenant, which is a requirement of the *Act*.

He advised that his landlord had ended his tenancy as of December 31, 2021; however, his Tenant has not given up vacant possession of the rental unit and still occupies it to this day.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 44 of the *Act* outlines how a tenancy may end, and subsection (g) states that the tenancy may end if the tenancy agreement is a sublease agreement.

Given the undisputed testimony before me, E.R. clearly created a Landlord/Tenant relationship when he subleased the rental unit to the Tenant. As such, he is bound by the *Act* with respect to his rights and obligations under the *Act*. Consequently, he is responsible for any issues that arise with his Tenant.

While E.R.'s tenancy with his landlord appears to have ended, he is still responsible for ensuring that vacant possession be granted back to his landlord, and he was informed that he could be held liable if his Tenant overheld in the rental unit by not giving up vacant possession. As well, E.R.'s landlord would make any claims for damages, or for an Order of Possession, against E.R. for his negligence.

However, as this was the Tenant's Application, I could not issue an Order of Possession to E.R. I could simply only make a finding on the matter before me with respect to the Tenant's Application.

I find it important to note that E.R. confirmed that he rents out multiple properties and rather than residing in them, he re-rents those properties out as part of some sort of business that he operates, which is not the purpose renting a property under the *Act*. Given that he does this with multiple properties, I am even more doubtful of the legitimacy of his submissions. I find it more likely than not that he was deliberately vague during the hearing, and his claims not to understand English were by design to feign ignorance to the fact that his actions with these properties are likely not entirely above board. I am suspicious that E.R.'s business venture operates in a manner that is likely a means of attempting to contract outside of the *Act* in order to take advantage of people.

Given that he claimed ignorance of his role as a Landlord under the *Act*, he was provided with the contact name for an advocate so that he could better understand his rights and responsibilities. However, his responses led me further to conclude that his business was not likely operating in a legitimate manner. He was cautioned that the Compliance and Enforcement Unit of the Residential Tenancy Branch investigates situations where landlords and tenants continually breach the *Act*, and this unit can enforce measures to ensure that contracting outside of the *Act* is halted.

With respect to the nature of the Tenant's Application, I am satisfied that a Landlord/Tenant relationship has been established between the Tenant and E.R. As such, the parties are reminded that the *Act* applies to this tenancy.

However, if E.R.'s tenancy has ended and the Tenant overholds in the rental unit, it would be up to E.R. to apply for an Order of Possession of the rental unit against the Tenant. Alternately, if E.R.'s landlord successfully obtains an Order of Possession against their tenant (E.R.), that Order of Possession will apply to any other occupant that resides in the rental unit. E.R.'s landlord would apply against him for any losses that they have suffered as a result of the negligence created by E.R. subletting the rental unit.

The Tenant was also informed that as a Landlord/Tenant relationship has been established between the Tenant and E.R., the Tenant can apply for any monetary

compensation against the Respondents in this Application for any breaches of the *Act* that occurred during the tenancy.

As I am satisfied that the Landlord was likely attempting to contract outside of the *Act* by operating dubious tenancies, I find that the Tenant is successful in this Application as it was not clear to him whether this situation fell under the jurisdiction of the *Act*. As such, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

Based on the above, the Tenant is provided with a Monetary Order in the amount of **$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 25, 2022

Residential Tenancy Branch