



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RMG100 LAND CORP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for an order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

The tenant attended at the date and time set for the hearing of this matter, accompanied by an advocate, TL. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant’s advocate to confirm that she had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. She testified that she had served the landlord with the notice of this hearing via Canada Post registered mail on September 20, 2022 and referred to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. The tenant’s advocate testified that she served her evidence to the landlord via email on January 12, 2023 and that the landlord acknowledged receiving it.

I deem the landlord served with the Notice of Dispute Resolution Hearing on September 25, 2023, the fifth day after it was sent via registered mail in accordance with sections 89 and 90 of the Act. I deem the landlord served with the tenant’s evidence package on January 15, 2023 the third day after it was sent via email in accordance with section 44 of the Residential Tenancy Regulations. Under Rule 3.17, the landlord had the opportunity to be heard on the question of accepting the tenant’s late evidence however

the landlord did not attend this hearing to do so. Consequently, I exercised by discretion to accept the tenant's evidence in accordance with rule 3.17.

Issue(s) to be Decided

Is this a tenancy under the Act?

Background and Evidence

The tenant's advocate gave the following submissions. The rental unit is located in a building with multiple rental units. The building was purchased by the current landlord in April of 2022. The tenant has been living in the rental unit since July 1, 2021 with rent being paid to a previous tenant, "GC". When the new landlord inspected the building in April 2022 and met the tenant, they posted a notice on each of the tenants' doors giving instructions on paying rent.

The tenant followed the instructions and paid rent for May and June 2022. At the end of June, the landlord told the tenant that he was "GC's" subtenant as GC had sublet his unit without the previous landlord's written permission. Despite this, a new fixed term tenancy agreement was signed by the landlord and the tenant on July 22, 2022, running from June 1, 2022 to August 31, 2022. On the tenancy agreement, the reason noted for the tenant must vacate is "*sublet without written permission*" with section 34 of the Residential Tenancy Regulations noted. Both the landlord and the tenant initialled this section.

The landlord originally returned the tenant's May and June rent but later accepted rent for all 3 months in the amount of \$2,100.00. No receipt stating the acceptance of rent was for "use and occupancy" was provided to the tenant. On August 26, 2022, the tenant applied for dispute resolution seeking a finding that ending the tenancy is outside the legislation. On August 29, 2022, the landlord served the tenant with a notice of rent increase, effective December 1, 2022.

Analysis

Various definitions are found under section 1 of the Residential Tenancy 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;

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

Based on the undisputed submissions of the tenant, I find the parties are bound by a tenancy agreement. The tenant has been paying rent to the landlord for the right to possess the rental unit, and use of the common areas and facilities. The landlord has named KG, the person occupying the rental unit, as the tenant in their notice of rent increase. This rent increase is to commence on a date in the future which further lends credence to the finding that KG is the tenant of the rental unit. Lastly, and perhaps most importantly, the landlord has accepted the rent and signed a written fixed term tenancy agreement with the person they have identified as the tenant.

The landlord wrote "*sublet without written permission*" as the reason the tenant must vacate the rental unit on August 31, 2022, the end of the fixed term. This option would be allowed if this had been a tenancy agreement between an original tenant and a subtenant, such as a subtenancy between GC and the tenant before me. Given the evidence before me, I find that the fixed term tenancy agreement entered into between the parties on July 22nd is not a subtenancy; it is a true tenancy between a landlord and a tenant. A sublease agreement is defined under section 1 as:

"sublease agreement" means a tenancy agreement

- (a) under which
 - (i) the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and
 - (ii) the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and
- (b) that specifies the date on which the tenancy under the sublease agreement ends;

The tenant's advocate noted that the remaining reason for the tenant to vacate the rental unit does not fall within the circumstances prescribed under section 13.1 of the Residential Tenancy Regulations.

Section 31.1 states:

Fixed term tenancy — circumstances when tenant must vacate at end of term

13.1 (1) In this section, "**close family member**" has the same meaning as in section 49 (1) of the Act.

(2) For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], a circumstance in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term is that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.

(3) For the purposes of section 97 (2) (a.2) [*prescribing period of time for which a circumstance prescribed under paragraph (a.1) must be satisfied*] of the Act, the period of time for which the circumstance prescribed under paragraph (a.1) [*prescribing circumstances when landlord may include term requiring tenant to vacate*] must be satisfied is 6 months.

I note that the landlord is not an individual, but a corporation. By definition, corporations are not individuals so it is impossible for the corporation to have "close family members" who will occupy the rental unit at the end of the tenant's fixed term. Consequently, I find the vacate clause specified on the tenancy agreement has no force or effect and that the tenancy continues on a month-to-month basis until it is ended in accordance with the Act.

Conclusion

The parties are bound by the tenancy agreement signed on July 22, 2022. The current status of the tenancy is month to month, and I deem it has continued as a month to month tenancy since the end of the original fixed term on August 31, 2022.

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: January 16, 2023

Residential Tenancy Branch