



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EIGHTLAND PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act against four co-tenants.

The landlord's agent appeared for the hearing and three of the named tenants appeared for the hearing.

I confirmed the landlord had notified the tenants of this proceeding by registered mail sent on January 20, 2023.

Preliminary and Procedural Matters

1. Request for adjournment

The tenants requested an adjournment on the basis they did not have much time to gather their evidence given the short amount of notice before the scheduled hearing date. As this is an "expedited hearing" scheduled on the allegation(s) that urgent and severe circumstances are such that it would be unreasonable for the landlord to end the tenancy by way of a One month Notice to End Tenancy for Cause, I explained the reason for the short notice period. Given this is an expedited hearing, I was of the view it may be prejudicial to the landlord to grant an adjournment; however, with a view to fairness to the tenants, I informed the parties that I would proceed to hear the landlord's case to determine if there is even sufficient grounds to consider ending the tenancy under section 56 of the Act. I informed the parties that if there was sufficient indication that the landlord has grounds for ending the tenancy on an urgent basis that I would consider their request for adjournment again. The parties appeared to be satisfied with this approach.

2. Type of tenancy: co-tenants or tenants in common

The tenants were of the position they should not be in this proceeding together as they have separate tenancy agreements with the landlord. The landlord was of the position there was a co-tenancy agreement for rental of the entire house. I proceeded to explore this issue with the parties as a preliminary matter. Below, I have summarized what I heard from both parties and my findings as to the type of tenancy the parties have.

The landlord described the rental unit as being a house with six bedrooms on two floors. The tenants described how there are two floors and that the tenants do not move from one floor to the other without knocking on an interior door and getting permission to enter. The lower floor has a kitchenette and the upper floor has a full kitchen. Both floors have a bathroom.

The landlord testified that tenant DL had been residing in the rental unit along with her daughter and others under a co-tenancy agreement. That co-tenancy agreement ended at the end of July 2022. DL wished to stay in the rental unit as a tenant and that she would have other people move in to help her pay the rent of \$3250.00. The landlord was agreeable but did not prepare a written tenancy agreement. The landlord instructed DL to have the additional occupants complete a tenancy application form. DL paid the landlord \$900.00 in rent, through the Ministry, for the months of August 2022 through January 2023.

Tenant RB moved into the house on August 15, 2022 and when he moved in, he understood he would was to pay rent to DL and DL was responsible for paying rent to the landlord.

Unfortunately, DL did not pay the landlord the rent she had collected, claiming it had been stolen and DL had yet to provide the landlord with any completed tenancy application forms.

RB testified that in September 2022 the landlord told him that DL was not his landlord and that he was his landlord. The landlord completed a Intent to Rent form for RB and the landlord received \$700.00 in rent from the Ministry on behalf of RB for October 2022. After that conversation and the completion of an Intent to Rent form, RB considered the landlord to be his landlord under his own tenancy agreement with the landlord for rental of a room plus shared access the lower floor bathroom and kitchenette.

In November 2022 the landlord stated he received rent from various different people occupying the house, some of whom he had never met before and did not know their names but that he was not getting the full \$3250.00.

Tenant JM testified that he moved in on December 6, 2022 and the landlord prepared a written tenancy agreement naming JM as the sole tenant and a monthly rent of \$750.00. JM was of the position he is renting a bedroom from the landlord, plus shared access to the kitchen and bathroom on the upper floor.

The landlord acknowledged that, like he did with JM, he also prepared another separate written tenancy agreement identifying tenant TT as a tenant and an obligation for TT to pay the landlord a monthly rent.

The landlord explained that in preparing separate tenancy agreements, he was merely trying to secure a way to collect rent from the individuals so that he could receive rent payments totalling \$3250.00.

Residential Tenancy Policy Guideline 13 provides information and policy statements with respect to co-tenants and tenants in common. Below, I have reproduced relevant portions of the policy guideline to assist the parties in understanding the difference and my decision.

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; **co-tenants are two or more tenants** who rent the same rental unit or site **under the same tenancy agreement**. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both

equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants **to ensure that the full amount of rent is paid when due.**

G. TENANTS SHARING COMMON SPACE

Sometimes tenants under separate tenancy agreements share common space. Each tenant is responsible for the obligations established under their own tenancy agreement and is not responsible for debts or damages relating to the other tenancy.

An example of tenants sharing common space is two tenants renting rooms under separate tenancy agreements on the same floor of a home and sharing a common bathroom and living room. The tenancy agreements for each tenant state that they are individually responsible for paying rent for their respective tenancies and both tenants paid separate security deposits to the landlord.

If one tenant causes damage to their rental unit, or fails to pay rent, the other tenant bears no responsibility for those damages or debt. If one tenant ends their tenancy with the landlord, the other tenant's tenancy will be unaffected. The tenant who ended their tenancy can ask for the return of their security deposit from the landlord whether the other tenant decides to continue their tenancy.

Where multiple people live in a rental unit and pay part of the rent to the landlord, there is a presumption that they are co-tenants unless there is compelling evidence to the contrary. Evidence such as separate tenancy agreements for each person, rent receipts, or receipts for different security deposits may help indicate whether the tenants are co-tenants, tenants sharing common space, or occupants.

In this case, DL continued to occupy the house after the co-tenancy with her daughter ended and the landlord received rent from DL. As such, there is an implied tenancy agreement between the landlord and DL. Both the landlord and DL provided consistent statements that when DL remained in the unit after her daughter vacated that DL would be responsible for paying the monthly rent of \$3250.00 and it was upon her to find other people to move in to help her come up with the monthly rent. Unfortunately, the

landlord did not prepare a written tenancy agreement with DL but I accept that, initially, DL was the sole tenant responsible for paying the monthly rent of \$3250.00.

When RB moved in, RB expected to pay rent to DL and DL would forward pay the rent to the landlord. Such an arrangement would be consistent with RB being DL's roommate and DL as being the sole tenant. However, when DL failed to give the landlord the rent she had collected from the other occupant(s)/roommate(s), I find the arrangement changed. The landlord completed an Intent to Rent form for RB so as to have RB's rent sent directly to him and the landlord informed RB that he was his landlord and not DL. RB interpreted this to mean he had a tenancy in common, separate from DL's tenancy, which I accept is a reasonable conclusion. Unfortunately, the landlord did not prepare a written tenancy agreement for DL and RB that would point to them as being co-tenants or tenants in common.

Of greatest significant in making my decision, is the landlord's decision to enter into separate tenancy agreements with tenant JM and tenant TT after they moved in, reflecting a monthly rent much less than the rent that the landlord had wanted for the whole house. JM was of the position he was renting a bedroom, plus shared access to the kitchen and bathroom, based on his tenancy agreement the landlord prepared and I find that conclusion is supported by the evidence.

I find the landlord's actions and the paperwork he did complete with tenants to be more consistent with having tenants in common, each responsible for paying their individual amount of rent to the landlord, rather than co-tenancy agreement where there is only one tenancy agreement listing all tenants and an obligation to pay one amount for the entire rental unit. While the landlord may not have intended to create tenancies in common, the tenants have a right to rely upon the tenancy agreements the landlord created with them, and I find the landlord bound by the agreements he entered into.

In light of the above, I find the tenants named in this Application for Dispute Resolution are not co-tenants and they are tenants in common. Since the actions taken against one tenant in common do not impact the other tenants in common, it is improper to have one application against all of the tenants in common. The landlord must make separate applications against each tenant.

Given there were three tenants in common at the hearing, I informed the parties I would hear the landlord's case against one of the tenants. The landlord chose to proceed against DL. The other tenants, RB and JM, were excused.

I amended the application to exclude the names of tenants RB, JM and TT. I also amended the application to reflect the specific bedroom occupied by DL.

3. Mutual Agreement

I proceeded to hear from the landlord and DL and after both of the parties had an opportunity to be heard, the parties turned their minds to reaching a mutual agreement in resolution of this matter.

I was able to facilitate a mutual agreement between the parties and I record it by way of this decision and the Order of Possession that accompanies it.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

During the hearing, the parties mutually agreed to the following terms in resolution of this matter:

1. The tenancy shall end at noon on February 8, 2023 and the tenant is required to vacate the property by that time.
2. The landlord shall attend the property at noon on February 8, 2023 for purposes of inspecting the tenant's room and the tenant returning possession of the room to the landlord.
3. The landlord shall knock on the front door of the house and wait for DL to open the door. If DL or another occupant does not open the door the landlord may enter and proceed to the DL's room to inspect it.
4. The landlord is provided an Order of Possession to ensure DL vacates the rental unit effective noon on February 8, 2023.
5. The security deposit shall be administered in accordance with the Act after the tenancy ends.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlord with an Order of Possession effective at 12:00 p.m. (noon) on February 8, 2023.

Conclusion

The parties reached a mutual agreement in resolution of this dispute.

In recognition of the mutual agreement, I provide the landlord with an Order of Possession effective at noon on February 8, 2023.

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 03, 2023

Residential Tenancy Branch