



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an application by the applicant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

- cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”) pursuant to section 47; and,
- an order requiring the respondent to comply with the Act, regulation or tenancy agreement pursuant to section 62.

KK, the applicant and RT, the respondent appeared at the hearing.

At the outset of the hearing, the applicant conceded that they did not serve the respondent with the Notice of Dispute Resolution Proceeding and their supporting evidence. The respondent confirmed the same.

The respondent testified that they served the applicant with their evidence, by leaving a flash drive containing their evidence in the applicant’s mailbox. When questioned, the respondent indicated that the flash drive did not contain any identifying factors such as a label. The applicant testified that they did not receive the respondent’s evidence and would not have known what it was had they received it.

According to the Residential Tenancy Branch Rules of Procedure, the parties to a proceeding are required to serve one another with their application materials and be prepared to provide proof of service to an Arbitrator at the hearing. There is no dispute that the applicant did not serve the respondent with their application material and on that basis, I find that the applicant did not sufficiently serve the respondent with the Notice of Dispute Resolution Proceeding or evidence.

With regard to the respondent's evidence, while I accept that the respondent placed a flash drive containing their evidence into the mailbox of the applicant, given that the flash drive contained no identifying factors to alert the applicant to its contents, I find that the respondent did not sufficiently serve the applicant with their evidence.

Based on the foregoing, neither parties' documentary evidence has been considered for the purpose of rendering a decision in this matter.

Preliminary and Procedural Matters

The respondent testified that they are not the owner of the property but rather, they rent the property from the owner and sublease the basement to the applicant.

The parties testified that the applicant moved into the rental unit after the roommate of the former tenant moved out in July 2022. Since that time, the applicant has paid \$900.00 to the respondent monthly on the first day of the month. The parties testified that the applicant paid the respondent a \$450.00 security deposit and a \$450.00 pet deposit.

The parties testified that in February 2023, the roommate of the applicant gave notice to the respondent to end their tenancy at which time the applicant was asked to leave. The applicant did not leave.

The respondent testified that following the roommate's departure, the applicant became responsible for rent for the entirety of the basement suite which amounted to \$1800.00 per month. The applicant did not pay the \$1800.00 that the respondent alleged was due on April 1, 2023, and on that basis, the respondent issued a 10-Day Notice to the applicant.

While the hearing proceeded and the parties provided further testimony, upon further consideration, I find I cannot establish that I have jurisdiction based on the testimony of the parties. It is evident to me, that the respondent is not the owner of the residential property, but rather they themselves are a tenant. Therefore, in order for me to establish that I have jurisdiction to decide this matter, I am required to determine that a sublease agreement was in place between the parties.

However, based on the testimony of the parties, I find there is insufficient evidence to establish that the parties ever entered into a sublease agreement.

Residential Tenancy Branch Policy Guideline 19 discusses a sublet as contemplated by the Act.

The following is stated at Pages 3 and 4:

[...]

Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. **This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit.**

[...]

In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, **the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter.** The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. **In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.**

[my emphasis added]

The parties did not provide testimony to support that they entered into a sublease for a period shorter than that of the original tenancy which is between the respondent and the owner of the property. Furthermore, the parties disagreed as to the amount of rent due and when or if a written sublease was completed.

After hearing from the parties, I am not satisfied that a tenancy agreement or sublet tenancy agreement is in place between the applicant and respondent. As a result, I am not satisfied that I have jurisdiction over this matter. However, as a courtesy to the parties, I recorded their settlement agreement.

Settlement

Prior to commencing the hearing, the parties reached a partial settlement of the issues in the applicant's application. Pursuant to section 63 of the Act, I record their agreement in this Decision. I make no findings of fact or law with respect to the merits of the applicant's application or whether this dispute fell under the jurisdiction of the *Residential Tenancy Act*.

1. The applicant will vacate the rental unit on or before June 1, 2023, not later than 1:00 p.m.
2. The respondent is granted an Order of Possession (Order) effective at 1:00 p.m. on June 1, 2023, which becomes enforceable should the applicant fail to vacate the property by the agreed upon date and time.

This decision containing the recorded settlement 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 31, 2023

Residential Tenancy Branch