



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an order of possession for the tenant's notice to end the tenancy, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord and the tenant (GE) attended the hearing and the tenant was assisted by an Advocate. The landlord's agent and the tenant each gave affirmed testimony and the landlord called 2 witnesses who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the tenant gave notice to end the tenancy?

Background and Evidence

The landlord's agent (MK) testified that this tenancy began on June 1, 2080 on a fixed term for 5 months and then reverted to a month-to-month tenancy. Rent in the amount of \$1,491.00 is currently payable on the last day of each month for the following month, but the landlord's agent has only been an agent for the landlord since 2007 and does not know what the rental amount was at the beginning of the tenancy. The only rental arrears are for the month of October, 2023 which was due on September 30, 2023. At the outset of the tenancy the landlord collected a security deposit from the tenants in the

amount of \$100.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 160 units in 6 buildings. The landlord's agent believes there is a written tenancy agreement, but a copy has not been provided for this hearing.

The landlord's agent further testified that the tenant (GE) and his father lived in the rental unit and the father has passed away; the tenant (GE) still resides in the rental unit.

On July 29, 2023 the landlord received a notice to end the tenancy from a Power of Attorney. A copy has been provided for this hearing and it is dated July 23, 2023 and contains an effective date of vacancy of August 30, 2023. It states that the father is in hospice care, and that the person (RE) is Power of Attorney for him. Head office wants the tenant (GE) to move out, perhaps because of the low rent. The landlord did not receive a copy of the Power of Attorney.

The landlord's first witness (CK) testified that when the notice to end the tenancy was given the person said that he was giving up the apartment and the tenant (GE) had to move out because the person was the executor. The tenant (GE) said he wasn't leaving, and the person who gave the notice to end the tenancy said, "I'm not dealing with this anymore," threw the keys at the witness and left. The witness did not receive a copy of a Power of Attorney.

The tenant's father lived in the rental unit and paid the rent. The first the landlord's witness heard of a person who had Power of Attorney was when he arrived to deal with the apartment on July 29, 2023. He is a brother to the tenant (GE) and lives in Alberta. The tenant (GE) was living with his parents in the rental unit, and the witness realized 5 or 6 years ago that he resided in the rental unit.

The landlord's second witness (JW) testified that the witness received a call at the end of July, 2023 from the wife of a person who identified himself as a son of the tenant. The wife said they were coming to the rental building to give up the apartment, pay the final rent and return to Alberta. The father passed away on July 20, 2023. Nothing was said about a Power of Attorney.

The tenant testified that he has lived in the City since birth, and moved into the complex in about 1980 and he lived there until he finished school in 1983. In 1987 the tenant went to Alberta to start a job with his brother. The tenant returned to the City the same year and lived with his parents, who were elderly.

The tenant is not as rich as his brother (RE) and is on Social Assistance. The tenant does not want to leave the premises and is now confused what to do for his future, and considers himself a tenant.

SUBMISSIONS OF THE LANDLORD'S AGENT:

Head office wants the tenancy to end, and the landlord's agent does not know if the tenant (GE) can financially pay the rent.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The landlord has not provided a copy of the tenancy agreement to prove that the tenant (GE) is a not named as a tenant. The tenant's brother gave a notice to end the tenancy on July 23, 2023 in accordance with a Power of Attorney. However a copy has not been provided and the father passed away on July 20, 2023. A Power of Attorney is not valid once the person dies. The landlord has not served the tenant with a One Month Notice to End Tenancy for Cause, and the letter of the person claiming to have Power of Attorney (RE) has no effect and there is no authority for him to end the tenancy.

Analysis

Where a landlord applies for an order of possession, the onus is on the landlord to establish that a notice to end the tenancy was given. In this case, the landlords accepted a notice to end the tenancy by a person saying he was Power of Attorney, but no one received a copy of that.

If it is true that the father passed away on June 20, 2023, the Power of Attorney died with him, and if the person actually had Power of Attorney, he had no power to give a notice to end the tenancy on the date the notice was given. Further, there is nothing before me to suggest that the tenant (GE) isn't also named in the tenancy agreement.

In the circumstances, I am not satisfied that the landlord has established that a person with legal power to give a notice to end the tenancy actually gave it. The landlord's first witness testified that when the notice to end the tenancy was given, the person said that he was giving up the apartment and the tenant (GE) had to move out because the person was the executor. I see no evidence of a Power of Attorney or an executor.

Therefore, I dismiss the landlord's application and the tenancy continues until it has ended in accordance with the law.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply and the tenancy continues until it has ended in accordance with the law.

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: November 02, 2023

Residential Tenancy Branch