



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Utilities (10 Day Notice) under sections 46 and 55 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlords JVD and AB. were served on February 13, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

The registered package to Landlord AB was returned to the Tenant. The reason for the return stated "moved". The tenant filed a copy of the returned mail. The address on the package was the address of the owner of the property JVD. Landlord AB resided in the rental unit prior to moving out on February 01, 2024.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord JVD in accordance with section 88 of the Act.

The Landlord confirmed that no evidence was filed by the Landlord.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

AB entered into a rental agreement with landlord JVD and moved into the rental unit on December 01, 2005, along with her roommate/boyfriend. The rent was set at \$2,800.00 and was due on the first of each month. The rental unit consists of a 2-level home and has 3 bedrooms on the upper floor.

Sometime in 2020, AB's roommate/boyfriend moved out. AB moved to the lower level and found other roommates to share rent with. These roommates (FS and IS) moved into the rental unit on August 01, 2020. The tenancy agreement between AB and FS/IS, was handwritten by AB. The monthly rent was \$1,300.00 due on the first day of each month. FS and IS occupied two of the 3 bedrooms on the upper floor.

On November 01, 2020, AB rented the third bedroom to RG at a rent of \$700.00.

The roommates agreed that they paid rent to AB who handed it over to the landlord JVD. JVD stated that she received rent from AB and did not know or have dealings with AB's room mates.

AB failed to pay utilities to the landlord JVD and was served a 10 Day Notice to end tenancy for unpaid utilities. AB's tenancy ended on February 01, 2024. AB informed her room mates that the tenancy had ended and all occupants had to be out of the rental unit by February 01, 2024. However, the room mates continued to occupy the rental unit, past this date.

On February 09, 2024, AB served the roommates FS, IS and RG with a 10 Day Notice to end tenancy for nonpayment of utilities. FS and IS disputed the Notice on February 13, 2024. RG also made application to dispute the Notice on February 13, 2024

This hearing dealt with applications by the occupants of the rental unit pursuant to the *Residential Tenancy Act*, for an order to cancel the 10-day Notice to end tenancy for unpaid utilities.

Occupant RG did not attend the hearing and accordingly RG's application is dismissed without leave to reapply. At the time of this hearing RG had already moved out of the rental unit.

Analysis

Residential Tenancy Policy Guideline#19 addresses assignments and sublets.

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the *Act* does not support a landlord/tenant relationship between the tenant and the third party.

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant.

In this case, the tenant rented out space in the rental unit to room mates without adding these room mates to the original arrangement between the original tenant AB and the landlord JVD. JVD testified that she did not know AB's room mates and dealt solely with AB, who paid the monthly rent to her. Alternatively, the landlord and tenant could have ended the previous tenancy agreement between AB and JVD and enter into a new tenancy agreement to include the occupants. Upon asking JVD if she would like to enter into a new tenancy agreement with the roommates, JVD declined.

Since FS, IS, and RG are occupant/room mates, they have no rights or responsibilities under the *Residential Tenancy Act*.

The tenant AB was evicted from the rental unit and moved out on February 01, 2024. Since AB's tenancy ended, the tenancy of all occupants/room mates also ended on February 01, 2024. Occupant RG moved out but occupants FS and IS continued to reside in the rental unit.

When AB moved out, she was required to give the landlord JVD vacant possession of the rental unit. The occupants continued to reside in the rental unit after the tenancy ended. Accordingly, I find that the landlord is entitled to vacant possession of the rental unit and I grant the landlord an order of possession.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and occupants.

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: March 25, 2024

Residential Tenancy Branch