



DECISION ON REQUEST FOR CLARIFICATION

Dispute Codes: FF LRE

The applicant has requested a clarification to the Residential Tenancy Branch decision dated October 31, 2013

Section 78 of Residential Tenancy Act enables the Residential Tenancy Branch to clarify a decision or order.

At the hearing held on October 31, 2013, I had found that the lack of evidence did not permit me to interpret the disputed terms of the verbal tenancy agreement based on the data presented at the hearing and the tenant's application was dismissed with leave to reapply. Other than ordering the parties to comply with the Act, I was not able to make a determination on the merits of the tenant's position.

The respondent landlord is now requesting clarification with respect to my findings and my order that the parties devise a written tenancy agreement that:

1. Strictly complies with the Act,
2. Specifies exactly what space is to be utilized solely by the tenant,
3. Specifies precisely what space is reserved for the landlord's use,
4. Identifies the percentage of utilities to be paid by the landlord and tenant, based on each party's share of the square footage of the building that they each occupy,
5. Alters the amount of rent being charged to recognize any additional areas now being claimed by the landlord for the landlord's exclusive use, that were not previously established as the landlord's area at the start of the tenancy.

The October 31, 2013 decision also required that the landlord ensure any areas proposed to be used by the landlord must be physically separated from the areas used by the tenant and each must have their own separate and secure entries. This is to ensure that there is no need for the landlord to access, or pass through, the tenant's living area to reach the portion of the building reserved for the landlord's use.

In the Request for Clarification, the landlord stated,

“As I am suspended from the property until there is a signed agreement, I have presented the tenants with a lease with all matters resolved...I am homeless and have done everything I can”

I find that the evidence presented with the application does support the landlord's request for clarification. I find it necessary to clarify the intent of the October 31, 2013, decision. In this regard, please note the following:

- The decision **does not suspend** the landlord from entering the property, pending the negotiation and signing of a written lease. The landlord still has a right under the Act and agreement to access the property, under specific conditions as described below.

1. The landlord is entitled, as he sees fit, to access any of the **landlord's own areas** that were reserved for the landlord's use as part of the tenancy agreement. However, my decision stated that free use and access is only allowed, ***provided the landlord has constructed a separate entry to the space*** and is therefore not required to pass through the area of the building that is exclusively occupied by the tenants.
2. If the landlord intends to use any **additional space** that ***was already previously granted to the tenant*** for their exclusive use, and the landlord has now decided to make changes to reclaim or restrict the tenant's portion of the building, the landlord must give the tenant proper notification in the manner described in section 27 of the Act, below.

A service or facility, other than an essential or material one may be restricted or terminated provided that the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

3. The landlord is also entitled under the Act to gain access to inspect **the tenant's portion of the property** or **to do necessary repairs or renovations**, provided the landlord give the tenant ***proper written notice*** as required under section 29 of the Act, excerpted below:

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In regard to my order in the October 31, 2013 decision requiring the parties to negotiate a written tenancy agreement, I ordered that they must cooperate and do this together, so that both parties understand and agree with the terms.

If a party refuses to cooperate with the October 31, 2013 order, the other party is at liberty to seek Dispute Resolution and can make an application to have the matter arbitrated.

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement. Section 58 of the Act also states that a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

Any time there is a particular tenancy term under dispute, and the parties are not able to reach an agreement on the interpretation of that term, the Act states that either party is entitled to make an application to have the matter arbitrated under section 58 of the Act.

I note that the proposed tenancy agreement put forth by this landlord, a copy of which had been included in the landlord's Request for Clarification, contains numerous tenancy terms that do not comply with the Act.

For guidance in composing an agreement, either party is at liberty to contact the Residential Tenancy Branch for information on where to locate an example of a compliant lease, which is available on the RTB website. The parties may choose to use this as a basis and then add their own addendum to include additional terms that they both agree on, so as to customize the agreement to their liking.

I hope that the above information adequately clarifies the October 31, 2013 decision for both the landlord and the tenant.

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 2, 2014

Residential Tenancy Branch