



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC RP RPP LRE AAT LAT AS RR O SS FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The Residential Tenancy Branch Record indicates that this application was scheduled for a priority hearing based on the Applicant's request for the return of his personal property. The Applicant filed their application for dispute resolution on September 15, 2015 seeking thirteen (13) different orders.

Upon review of the above, I have determined that I will not deal with all the dispute issues the Applicant has placed on their application as not all the claims on this application are sufficiently related to each other.

The Applicant clarified that the most significant issues he was seeking was possession of his former rental unit, the upper suite in the rental house, and to have his possessions placed back in that suite.

The issue of jurisdiction was raised by the Landlord who argued that the Applicant was not his tenant.

Based on the above, I will deal with the issue of jurisdiction and the Applicant's request for an Order of Possession and for his personal property to be returned to the upper level suite. I dismissed the balance of the Applicant's claim.

Introduction

The hearing was conducted via teleconference and was attended by the Respondent, his translator, the Applicant, and the Applicant's witness (the Witness). I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony. The Respondent affirmed that he had received the application, Notice of hearing documents and the Monetary Order Worksheet served with the application. No other evidence had been received from the Applicant.

The Applicant affirmed that he did not serve his ten pages of documentary evidence to the Respondent. He stated that his evidence was only served upon the Residential Tenancy Branch (RTB), which was placed on file on October 2, 2015.

The Respondent testified that he did not serve copies of his five pages of documentary evidence to the Applicant. The Respondent's evidence was received on file on October 1, 2015.

The Notice of Hearing document provides information about each party's responsibilities and stipulates, in part, the following:

1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.

[Reproduced as written]

Rules of Procedure 3.14 and 3.15 provide that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB 14 days before the hearing and received by the applicant and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above.

Based on the above, I find that neither party submitted their documentary evidence to the other party which is a breach of the Rules of Procedure. Therefore, I declined to consider either submission of documentary evidence as it would be prejudicial to the party who had not received or seen that evidence. That being said, each party was given a full and fair opportunity to present their evidence through oral submissions as well as the opportunity to respond each other's submissions.

Issue(s) to be Decided

1. Do these matters fall within the jurisdiction of the *Residential Tenancy Act (the Act)*?
2. If so, has the Applicant proven entitlement to an order of possession and an order to have the Landlord put his possessions inside the rental unit?

Background and Evidence

The Undisputed Evidence

The rental unit in question is a self-contained suite located on the upper level of a single detached home. The home has a total of three separate suites, the upper level suite plus two separate self-contained basement suites.

The Witness contacted the Respondent in response to his advertisement for a suite for rent. The Witness viewed the suite alone and agreed to enter into a written tenancy agreement with the Respondent for a tenancy which began sometime near the end of December 2012. The tenancy agreement listed only the Witness as a tenant and was signed by the Respondent and the Witness.

The Applicant to this dispute was not present at the time of the initial viewing of the suite or when the written tenancy agreement was entered into. The Applicant is not named as a tenant or occupant on the written tenancy agreement and he is not a signatory to the written tenancy agreement.

The Applicant and Witness had been living together in a conjugal relationship since sometime prior to the start of the Witness' tenancy agreement.

Sometime in January or February 2013 the Respondent gained knowledge that the Applicant was residing in the rental unit with the Witness. There have been times during the last three years where the Applicant gave the rent money to the Respondent; however, the Applicant was never added as a tenant to the written tenancy agreement.

On July 23, 2015 the Applicant engaged in a dispute and was arrested. The Applicant was released on conditions and was not allowed to attend the rental unit address without a police escort. The conditions were removed on September 28, 2015.

On July 25, 2015 the Witness served the Respondent with her written notice to end the tenancy. Sometime between July 25, 2015 and August 3, 2015 the Witness contacted the Respondent and requested that she be allowed to move into the basement suite, which demanded a lower rent, and the current occupants of the basement suite be allowed to move into the upper level suite.

A mutual agreement was reached between the Respondent, Witness, and the basement suite tenants. On August 3, 2015 the Respondent and Witness entered into a new verbal tenancy agreement for the Witness to occupy the rental unit located in one of the basement suites.

The Witness vacated the upper level rental unit sometime between August 3, 2015 and August 30, 2015 (Neither party was able to provide the exact date the Witness vacated the upper level unit). The Witness hired movers to remove her own possessions and the

Applicant's possessions from the upper level unit. The Witness had the movers place the Applicant's possessions in the garage and in other exterior areas of the property.

Applicant's Submissions

The Applicant testified that the Witness and he were together as a couple at the time she signed the tenancy agreement and they moved into the rental unit together; although he was not present at the time she viewed the unit or entered into the tenancy agreement. He argued that the Respondent gave him a document to sign but it was not a tenancy agreement it was called a "roommate agreement". He stated that he made changes to the agreement and returned it to the Respondent; however, the Respondent refused to sign it with the changes.

The Applicant asserted that the Respondent had the Witness sign a tenancy agreement when the Respondent knew the Witness was alone. He argued he has paid rent and therefore, is a tenant.

The Applicant testified that sometime prior to July 23, 2015 he informed the Respondent that he wished to remain in the rental unit on his own. He said the Respondent told him that he would have to discuss his request with the owners; however, the Respondent never came back to him with an answer.

The Applicant asserted that he is back living together with the Witness and his possessions do not fit inside the much smaller basement suite. He argued that he attended the rental unit with a police escort to try and pay rent for the upper unit and the Landlord refused to take his money. Therefore, he should be entitled to regain possession of his upper level rental unit.

The Applicant submitted that he is disabled and cannot move his furniture. As a result, he is seeking an additional order to have the Landlord move his possessions back into the upper level rental unit. He confirmed that he has regained access to the garage and all of his possessions where they are currently placed.

Witness' Submissions

In addition to confirming the undisputed evidence listed above, the Witness submitted that the Applicant and she initially broke off their relationship sometime in May 2015. The Applicant moved back in with her into the basement suite approximately 2 to 3 weeks prior to this October 15, 2015 hearing.

Respondent's Submissions

The Respondent argued that the Applicant was not his tenant. Rather, the Witness was his tenant, as per the written tenancy agreement.

The Respondent argued that although he had knowledge the Applicant was living in the unit he only collected some money from the Applicant for the rent simply because his tenant had asked him to pick up the money from him. He did not enter into any form of a tenancy agreement with the Respondent.

Analysis

The *Residential Tenancy Act* (the *Act*) and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 14(2) of the Act stipulates, in part, that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment in writing.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows:

...where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

[Reproduced as written]

Policy Guideline 13 further states, in part, that in situations where there are co-tenants, if one tenant gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.

After careful consideration of the foregoing, the oral testimony, and on a balance of probabilities I find as follows:

The evidence is irrefutable that the Applicant has occupied the rental unit with the Witness during the Witness' tenancy. What I must determine is the capacity in which the Applicant occupied the upper level rental unit.

When parties enter into a written tenancy agreement the terms and particulars of that written agreement remain in full force until such time as each party agrees to amend the agreement in writing and initial all changes, pursuant to section 14(2) of the *Act*.

Based on the Applicant's own submissions the Landlord had given him a document titled "Roommate Agreement" which is proof that the Landlord considered the Applicant a roommate and not a tenant. Furthermore, as all parties to the original tenancy agreement (Respondent and Witness) did not amend or agree to add the Applicant as a tenant, I find the Applicant was an Occupant and not a tenant to the tenancy agreement, pursuant to Policy Guideline 13. Therefore, there is not a written tenancy agreement in place between the Applicant and Respondent to which the *Residential Tenancy Act* applies.

As stated above, Policy Guideline 13 stipulates that even if the Applicant and Witness were co-tenants, the tenancy would have ended for all tenants and occupants on August 3 or 30th, 2015 when the Witness gave the Landlord her notice to end her tenancy and she vacated the rental unit. That being said, I have already determined that the Applicant and Witness were not co-tenants; rather, the Witness was a tenant and the Applicant was an occupant.

Upon consideration of the totality of the evidence before me, there was insufficient evidence to prove the Landlord breached the *Act*. Rather, the evidence proves the issues which resulted in the tenancy ending and the moving of the Applicant's possessions pertain to family matters between the Applicant and the Witness. Relationship or family matters do not fall within the jurisdiction of the *Residential Tenancy Act*. Accordingly, I declined to hear the matters pertaining to this application, for want of jurisdiction.

Conclusion

I have determined that the matters pertaining to this application and this Applicant do not fall within the jurisdiction of the *Residential Tenancy Act (the Act)*. The Applicant is at liberty to seek a remedy through the Court of competent jurisdiction.

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: October 20, 2015

Residential Tenancy Branch

