



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDCT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application”) that was filed by the Applicants under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, an Order for the Respondent to complete emergency repairs, and an order for the Respondent to comply with the Act, regulation or tenancy agreement in relation to their access to the full rental property.

The hearing was convened by telephone conference call and was attended by the property owner, the Respondent for the property owner (the “Respondent”), the Applicants, and the witness for the Applicants (the “Witness”). The parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the Applicants, copies of the decision and any Orders issued in their favor will be mailed to them at the dispute address. At the request of the Respondent, copies of the decision will be e-mailed to them at the address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that no information had been provided in the Application regarding the emergency repairs sought by the Applicants and requested clarification regarding this matter. The Applicants identified that no emergency repairs

are required and as a result, they withdrew their claim for emergency repairs. The Applicants remain at liberty to reapply for this matter.

The Applicants also sought a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, and an order for the Respondent to comply with the *Act*, regulation or tenancy agreement in relation to their access to the full rental property. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Based on the above, I find that the priority claim relates to whether there is a tenancy in place and therefore the issue of whether or not the Applicants are entitled to an Order for the Respondent to comply with the *Act*, regulation, or tenancy agreement. I find that the claim by the Applicants for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement is not sufficiently related to the continuation of the tenancy, and as a result, I exercise my discretion to dismiss this claim with leave to re-apply.

Preliminary Matter #2

In addition to the Application, the Applicants submitted an Amendment to an Application for Dispute Resolution form (the "Amendment") dated February 15, 2018. The Amendment stated that they would like to add a related claim for damages for harassment and loss of work. The Amendment was received by the Residential Tenancy Branch (the "Branch") on February 21, 2018, only five days before the hearing, and accompanied by six pages of hand-written evidence and a housing form for a social services agency. In the hearing C. D. first testified that the Amendment and attached documentary evidence was served on the Respondent by registered mail on January 3, 2018. However, when I pointed out that the date on the Amendment was February 15, more than a month after January 3, 2018, C.D. changed his testimony and stated that the Amendment and the attached documentary evidence was served on the Respondent personally on February 19, 2018.

The Applicants called their witness, who is C.D.'s mother, to provided testimony in relation to the service of the above noted documents. The Witness testified that although she could not recall the exact date, she was on the phone with her son at the time he attempted to serve the Respondent with the Amendment and attached documentary evidence. When asked to describe what she heard, the Witness was unable to provide detailed information but stated that she knew her son was serving the

Respondent as that is what he told her. When I asked the witness how she knew the other party present was the Respondent, she said she could hear his voice, however, the Witness later admitted that she has never met the Respondent.

The Respondent denied having ever been served the Amendment or attached documentary evidence and testified that he never attended the property on February 19, 2018. The Respondent did state that he attended the property on February 14, 2018, but was not granted access to the property by the Applicants or served any documents by them.

As the Witness was not physically present during the alleged service of documents and could not have recognized whether the voice of the other party was that of the Respondent as she has never met the Respondent, I find that their testimony is of little or no value in relation to the service of documents and I attribute no weight to it in rendering my decision.

The Rules of Procedure state, under sections 3.14 and 4.6 that Amended applications and supporting documentary and digital evidence intended to be relied upon at the hearing must be received by the respondent and the Branch not less than 14 days before the hearing. Rule 3.17 of the Rules of Procedure states evidence not provided to the other party and the Branch in accordance with the Act or Rules of Procedure may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence that was not available at the time that their application was made or when they served and submitted their evidence. The Rules of Procedure also state that the arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The Amendment and attached documentary evidence was not received by the Branch until five days before the hearing, which is a breach of the above noted sections of the Rules of Procedure. The Respondent also testified that they were never served with these documents, and given the contradictory testimony provided by the Tenants regarding the service of these documents; I find that it would be a breach of natural justice and the Rules of Procedure to accept this late Amendment and evidence for consideration. Further to this, there is no evidence before me that the Amendment could not have been completed and served on the Respondent and the Branch, along with the attached documentary evidence in accordance with the timelines set out in the Rules of Procedure. As a result, I have excluded the late evidence from consideration in this matter.

Preliminary Matter #3

During the course of the hearing it became apparent that the Respondent believed they had submitted documentary evidence in relation to this hearing that was not before me for consideration. Upon further discussion and investigation I determined that the Respondent has filed their own application, which was set for hearing with a different arbitrator, and that the Respondent in this matter submitted their documentary evidence on their own file, not the file before me for consideration in this hearing. As a result, I advised the parties that I could not consider the documentary evidence submitted by the Respondent that was not before me for consideration. However, I advised the Respondent that they were welcome to provide testimony for my consideration in relation to that evidence.

Preliminary Matter #4

Although the witness for the Applicants was present at the start of the hearing, they were excluded from the proceedings except when called upon to provide testimony.

Issue(s) to be Decided

Are the Applicants entitled to an Order for the Respondent to comply with the *Act*, regulation, or tenancy agreement?

Background, Evidence

The parties provided significant and conflicting testimony in relation to whether a tenancy exists, and the terms and conditions of any such tenancy, should it exist. However, only the relevant positions of the parties have been summarized below.

The Applicant C.D. testified that his brother and his brother's wife previously rented the property from the Respondent and that when his brother vacated the property at the end of his tenancy agreement, a verbal tenancy agreement was reached with the Respondent for him and his family to rent the entire home for \$2,060.00 per month. C.D. testified that he paid a \$1,000.00 security deposit and full rent for August on the date they moved into the property, which was on August 1, 2017. C.D. testified that they paid September's rent in full as required but due to an injury at work, he was unable to pay full rent for October. As a result, C.D. testified that they sought and received permission to obtain a roommate to assist with the rent. C.D. stated that a co-worker and his wife subsequently moved into the home in October but that their occupancy was short lived

as there was a falling out between them. In addition, C.D. testified that the roommates failed to pay the Applicants rent as required.

The Applicants testified that although they paid the rent in full themselves, their roommates were forcibly removed from the premises at the end of November or start of December by the Respondent. The Applicants stated that on December 6, 2017, the Respondent changed the locks to the front door and the laundry room, which restricted their access to only the basement suite of the home, and began renting out the upstairs suite without their consent or any agreed changes to their tenancy agreement. Although the Applicants testified that they paid rent from August – December, 2017, and have utilities set-up in their name at the property, no documentary evidence was submitted in support of this testimony. The Applicants testified that the Respondent also signed a form for a social services agency confirming that their daughter resides in the home and pays rent and that they have submitted the form for my consideration in support of their testimony. Although I am considering their testimony, as stated in the preliminary matters section of the decision, this documentary evidence was excluded from consideration in this matter.

In contrast to the testimony of the Applicants, the Respondent testified that no tenancy agreement has ever been in place with the Applicants who are unauthorized squatters in the property. The Respondent agreed that a tenancy agreement had been in place for the previous tenants mentioned by the Applicants but stated that the previous tenancy ended in November 2017. The Respondent testified that after the previous tenants vacated the property, he attended the home for the purposes of cleaning and maintenance and found an unknown occupant in the home. The Respondent testified that the occupant was not one of the Applicants in this matter and that the police attended the property with him on December 4, 2017, to give the occupant 24 hours' notice to vacate the property as they had no lawful right to be there. The Respondent testified that he and the police returned to the property at 11:00 P.M. on December 5, 2017, at which time they verified that property was empty and vacant and the locks to the front door were changed.

The Respondent testified that he subsequently signed a tenancy agreement for the entire home with new tenants for January 1, 2018, but they were unable to move into the property as the Applicants were found to be occupying the building on January 1, 2018, and would not allow the tenants access to the building. The Respondent testified that he does not know for sure how the Applicants gained access to the home but suspects that it was via the back door, as he did not change that lock as the previous tenants had never been provided with that key. Further to this the Respondent testified

that he has never signed any documentation for the Applicants and argued that if they have submitted any documentation alleged to have been signed by him, it is fraudulent.

Although both parties testified that the police have intervened regarding this matter on their behalf, no documentary evidence or testimony was submitted from the police in support of either party.

Analysis

Based on the conflicting testimony provided by the parties regarding whether a tenancy exists, I find that I must first determine whether I have the jurisdiction to decide the claim made by the Applicants under the *Act*. Section 1 of the *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 1 of the *Act* also defines a tenancy as a tenant's right to possession of a rental unit under a tenancy agreement.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. In this matter it is the Applicants who have made a claim seeking an order for the Respondent to comply with the *Act*, regulation, or tenancy agreement. As a result, I find that that it was incumbent upon the Applicants to satisfy me, on a balance of probabilities that a tenancy exists.

The parties provided significant and conflicting testimony regarding whether or not a tenancy exists, and although the Applicants stated that they paid rent as required under the verbal tenancy agreement and set up utilities in their name at the start of the tenancy, they did not submit any documentary evidence to corroborate these statements such as copies of utility bills in their name at the dispute address, proof that rent was withdrawn or paid, or copies of written communication with the Respondent regarding occupancy of the property.

Having considered the conflicting testimony before me from both parties, and the lack of documentary or other corroborative evidence from the Applicants in support of their testimony that a tenancy exists, I find that the Applicants have not satisfied me on a balance of probabilities that a tenancy exists. As a result, I decline to hear the claim made by the Applicants for an order for the Respondent to comply with the *Act*,

regulation, or tenancy agreement for lack of jurisdiction. I encourage the parties to seek independent legal advice with regards to this matter.

Conclusion

I decline to hear the claim made by the Applicants for an order for the Respondent to comply with the *Act*, regulation, or tenancy agreement for lack of 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: February 28, 2018

Residential Tenancy Branch