



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPT AAT ERP PSF**

Introduction

This is an application by the tenant under the *Residential Tenancy Act* (the “*Act*”) for the following:

- An order of possession for the tenant under section 54;
- An order to allow access for the tenant under section 30;
- An order for emergency repairs under section 62;
- An order to provide services or facilities required by the tenancy agreement or Act.

The tenant RM and the landlord AM attended the hearing. Each party was given the opportunity to make affirmed submissions as well as present oral and written evidence.

No issues of service were raised. I find the landlord was served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order of possession for the tenant under section 54;
- An order to allow access for the tenant under section 30;
- An order for emergency repairs under section 62;
- An order to provide services of facilities required by the tenancy agreement or Act.

Background and Evidence

The parties agreed on the following. RM, the named tenant, is the son of AM, the named landlord. To provide clarity, I will refer to the parties by their initials.

The parties agreed on all material aspects of the tenancy. AM owned the unit and has resided outside the country for several years. The unit is the tenant's "inheritance" and RM managed the unit for his mother. RM resided in the unit until September 2017 when he as well left the country to care for his mother. RM returns to Canada from time to time and stays in the unit. At the time of the hearing, both parties were outside the country.

RM testified that in July 2018, he gave his girlfriend KB permission to stay in the unit. RM was outside the country at the time. KB obtained a key to the unit *with* RM's permission; she undertook to forward mail to RM. KB has never paid rent to AM or RM. There was no agreement signed.

In September 2018, RM told KB to leave the unit because their personal relationship had ended. KB refused and continues to reside in the unit. RM demanded his key back and KB has declined to return it. For reasons which were not clear during the hearing, RM does not have a key to the unit and the strata has refused to assist him as this is a "landlord-tenant issue". RM testified he has made a report to the police that he is unable to gain access to his unit. RM reports the police told him to obtain an order of possession.

RM acknowledged that he gave KB permission to "visit" the unit or "stay" there; she is, at best, a "guest". He testified that KB has no right to be in the unit and he is the only person who lawfully should have possession and access to the unit. RM said his personal possessions are in the unit.

RM's primary requests included an application for an order of possession and an order of access to the unit.

AM testified KB is in the unit without her permission and she joined her son in requesting an order of possession and access to the unit by RM.

RM did not provide notice to KB of this application and she did not attend the hearing.

Analysis

In making my decision, I have reviewed all the evidence, both oral and documentary, presented by both the parties. I will only refer to relevant aspects in my decision.

I first consider whether the parties in this application are really landlord and tenant.

The Act is enforceable between a landlord and a tenant under a tenancy agreement. Section 1 of the Act defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) **the owner** of the rental unit, **the owner's agent** or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- [emphasis added]*

Section 1 defines "tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting **possession** of a rental unit, ... **and includes a licence to occupy a rental unit**;
[emphasis added]

Taking into account the above definitions and the testimony of the parties, I find that the parties to this application are not the landlord and tenant but are landlord and agent.

That is, AM is the landlord and RM, her son, is her agent. I find the parties have comparable interests.

I also find that PM, as the agent of AM, entered into a verbal tenancy agreement regarding the unit with KB. There is no need to determine at this hearing whether this tenancy agreement is a licence to occupy as opposed to a tenancy. It is this tenancy agreement which is at the heart of this application. This application is in essence a request for an order compelling KB to deliver up the unit. Yet, KB has not been named as a party, nor has she been served with notice of the hearing.

As relief is requested with respect to this tenancy agreement between KB and RM, KB must be notified of these proceedings. *Residential Tenancy Policy Guideline # 12 – Service Provisions* states that the purpose of service of documents is to notify parties of matters relating to a tenancy agreement and *to give them notice that action is being taken against them*. I find that KB is a party with a tenancy agreement with RM requiring “notice that action is being taken against them.”

Once named, all parties must be served with notice of the application including all supporting documents. This allows them to prepare for the hearing and gather documents they may need to support their position. The Guideline states:

Generally, the object of service of documents is to give notice to the person who has been served that an action has been or will be taken against them. (page 11)

...

Important: **all parties** named on an application for dispute resolution **must** receive notice of the proceedings. (page 2)

...

Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. (page 2)

I find that KB is a party with a tenancy agreement with RM requiring notice that action is being taken against her by RM. I find KB has not been notified as required. I find failure to name KB as a party and failure to serve her with notice does not comply with the *Act*. I therefor dismiss the application with leave to reapply.

Conclusion

The application is dismissed with leave to reapply.

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: December 14, 2018

Residential Tenancy Branch