



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, MNDCT, OLC, OPT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 02, 2019 (the “Application”). The Tenants applied as follows:

- For an order that the Landlord allow access to the unit;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- To obtain an order of possession of the rental unit; and
- For compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with her friend to assist given a language barrier.

One of the tenants named on the Application is a child and therefore I removed this name from the style of cause. The Landlord provided her full legal name and this is reflected in the style of cause.

The Tenant clarified the requests in the Application at the outset as follows. He is seeking access to the rental unit to obtain his belongings that are still in the rental unit. He does not want possession of the rental unit or to live at the rental unit and therefore does not want an order of possession. He is asking that the Landlord comply with the *Residential Tenancy Act* (the “Act”) by providing a copy of the written tenancy agreement signed by the parties.

Given the Tenant’s position, I will not consider the request for an order of possession of the rental unit.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants had submitted evidence prior to the hearing. The Landlords had not. I addressed service of the hearing package and Tenants' evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlords allow access to the unit?
2. Are the Tenants entitled to an order that the Landlords comply with the Act, regulation and/or the tenancy agreement?
3. Are the Tenants entitled to compensation for monetary loss or other money owed?

Background and Evidence

The Tenants sought the following compensation:

1. \$1,500.00 paid to Landlords for security deposit and first month's rent;
2. \$375.00 for food;
3. \$450.00 for storage costs for three months;
4. \$245.00 for moving expenses;
5. \$300.00 for baby food; and
6. \$80.00 for gas.

The Tenant testified as follows in relation to this tenancy. The Landlords agreed to rent the rental unit to the Tenants starting April 01, 2019. A written tenancy agreement was signed by the Tenants and Landlord B.H. but the Tenants never received a copy of it. The tenancy was going to be for a six-month term. Rent was going to be \$1,000.00 per month due on the first day of each month. The Tenants paid a \$500.00 security deposit and the first month's rent on March 20th when the tenancy agreement was signed. The Landlords gave the Tenants a key to the rental unit that day.

The Tenant further testified as follows. The Tenants gave the Landlords a cheque on May 20th for the security deposit and first month's rent. The following day, the Landlords said they needed cash. The Tenants brought the Landlords \$1,500.00 in cash on March 21st.

The Tenant further testified as follows. The Tenants started moving their belongings into the rental unit on March 24th with the permission of the Landlords. The Tenants met with the Landlords on March 30th at which time the Landlords asked for \$200.00 more per month for rent. The Tenants said they were not able to afford this. There was an argument between the parties. The Landlords told the Tenants they were not allowed to move into the rental unit and asked for the key back.

The Tenant testified that he did not give the key back and still has it. He said he left and sought help with the situation. The Tenant testified that he attended the rental unit once in April and some of his belongings were outside on the lawn. He said he took the belongings that he was able to at that time. The Tenant testified that some of his belongings are still in the rental unit.

The Landlord testified as follows on her own and through her friend. The Tenants came to look at the rental unit and wanted to rent it. The Landlords asked for further information and proof of employment. The Landlords agreed verbally to rent the rental unit to the Tenants starting April 01st. The Tenant signed the written tenancy agreement, but the Landlords did not because they still wanted further information and proof of employment from the Tenants. The parties did not talk about the term of the tenancy. The parties agreed rent would be \$1,000.00 per month due on the first of each month.

The Landlord further testified as follows. The Landlords received a \$1,000.00 cheque and \$500.00 in cash from the Tenants. The Landlords have not cashed the cheque. The Landlords subsequently told the Tenants they could not move into the rental unit because they had not provided the further information or proof of employment as requested. The Landlords told the Tenant to come get his belongings, but he would not do so.

The Landlord acknowledged that the Landlords moved some of the Tenants' belongings outside as stated by the Tenant. The Landlord said the Landlords did not seek a higher rent amount as stated by the Tenant. The Landlord testified that the rental unit has not been re-rented and some of the Tenants' belongings are still in it.

I asked the Landlord if she was okay with the Tenant attending the rental unit to pick up his belongings and the Landlord said she was fine with this.

The Landlord testified that the Landlords do not have a copy of the tenancy agreement that the Tenant signed.

I asked the Landlord if she was willing to return the money paid by the Tenants for the rental unit. After some discussion between the parties, the Landlord agreed the Landlords received \$1,500.00 in cash from the Tenants for the security deposit and first month's rent. The Landlord agreed to return this to the Tenants.

Analysis

I find that the Tenants and Landlords entered into a tenancy agreement in relation to the rental unit when the Landlords agreed to rent the rental unit to the Tenants and accepted the \$1,500.00 for the security deposit and first month's rent. Whether the Landlords signed the written tenancy agreement or not is irrelevant as the *Act* allows for verbal tenancy agreements given the definition of a "tenancy agreement" under section 1 of the *Act* which states:

"tenancy agreement" means 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 [emphasis added]

The parties were bound by the tenancy agreement and *Act* at the point the security deposit and first month's rent were paid as stated in section 16 of the *Act*.

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. [emphasis added]

The Landlord testified that the Landlords did not allow the Tenants to move into the rental unit because the Tenants had not provided the required information and proof of employment. This was not a basis to end the tenancy that had been created. If the Landlords required further information, they should have obtained that prior to agreeing to rent the rental unit to the Tenants and prior to obtaining the security deposit and first month's rent.

Here, the Tenants do not seek possession of the rental unit as they do not wish to live at the rental unit. The Tenants seek access to the rental unit to obtain their belongings. The Landlord agrees that the Tenants can access the rental unit to obtain their belongings.

During the hearing, there was a discussion about when the Tenants would attend the rental unit. The Tenant sought three weeks to do so. I asked the Landlord if she agreed to this and she did not. The Landlord did agree to two weeks. I told the parties they could either come to an agreement about this or leave it to me to decide.

I did point out the following to the Tenant. The Tenants applied to the RTB for an order allowing access to the rental unit on April 02nd. We were now at a hearing to determine this issue. The Tenants' belongings are in the Landlords' property and have been for a month. The Tenants should pick up their belongings as soon as possible.

The Tenant explained that a family-related issue had recently arisen and that he could only attend the rental unit the day of the hearing or not for three weeks. During the hearing, the Tenant asked the Landlord four times to consider changing her position. Each time the Landlord indicated two weeks was agreeable but not three weeks. The Tenant became emotional about this. I clearly explained to the Tenant more than once that he did not have to agree to the two-week timeline and that he could leave it to me to decide. The Tenant eventually confirmed that he agreed to the two-week timeline.

Given the position of the parties, I make the following order pursuant to section 62(3) of the *Act*:

1. The Landlords are to allow the Tenants access to the rental unit to pick up their belongings. The Tenants are to attend the rental unit and pick up their belongings within two weeks of the date of the hearing.

I note that the parties confirmed they can contact each other and will communicate about this. The parties did not seek further orders or directions in this regard.

Copy of tenancy agreement

I am not satisfied the Landlords have a copy of the written tenancy agreement given the Landlord's testimony on this point. Therefore, I decline to order that the Landlords provide a copy of the tenancy agreement to the Tenants.

Monetary compensation

The parties agreed the Tenants paid the Landlords \$1,500.00 for the security deposit and first month's rent. The Tenants sought return of this. The Landlord agreed at the hearing to return this amount. Therefore, I make the following order pursuant to section 62(3) of the *Act*:

2. The Landlords are to return \$1,500.00 to the Tenants as return of the security deposit and first month's rent within two weeks of the date of the hearing. The Tenants are issued a Monetary Order in this amount. If the Landlords do not return \$1,500.00 to the Tenants within two weeks, the Tenants can serve this Order on the Landlords. If the Landlords do not comply with the Order, it can be filed in Provincial Court (Small Claims) and enforced as an order of that Court.

The hearing proceeded for an hour and 40 minutes despite being set for one hour. Given the hearing time, I was not able to hear from the parties on the remaining monetary compensation sought. The remaining monetary claims are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

Keys

The Landlord asked that the Tenants return the keys to the rental unit. The Tenant agreed to do so. Therefore, I make the following order pursuant to section 62(3) of the *Act*:

3. The Tenants are to return the keys to the rental unit to the Landlords within two weeks of the date of the hearing.

Conclusion

Given the agreement of the parties, I make the following orders pursuant to section 62(3) of the *Act*:

1. The Landlords are to allow the Tenants access to the rental unit to pick up their belongings. The Tenants are to attend the rental unit and pick up their belongings within two weeks of the date of the hearing.

2. The Landlords are to return \$1,500.00 to the Tenants as return of the security deposit and first month's rent within two weeks of the date of the hearing. The Tenants are issued a Monetary Order in this amount. If the Landlords do not return \$1,500.00 to the Tenants within two weeks, the Tenants can serve this Order on the Landlords. If the Landlords do not comply with the Order, it can be filed in Provincial Court (Small Claims) and enforced as an order of that Court.
3. The Tenants are to return the keys to the rental unit to the Landlords within two weeks of the date of the hearing.

I decline to order the Landlords to give a copy of the written tenancy agreement to the Tenants.

The request for monetary compensation, other than the \$1,500.00 for the security deposit and first month's rent which is addressed above, is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 01, 2019

Residential Tenancy Branch