



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 23, 2019 (the “Application”). The Tenants applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. The Tenants sought reimbursement for the filing fee.

The Tenants filed an Amendment dated April 26, 2019 seeking an Order of Possession for the rental unit.

The Tenants filed a second Amendment dated April 30, 2019 removing the claim for an Order of Possession and adding a monetary claim in the amount of \$327.70.

The Tenants filed a third Amendment dated May 07, 2019 changing the monetary claim to \$366.97.

The Tenants appeared at the hearing. The Landlord’s father (the “Agent”) appeared at the hearing for her. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package, Amendments and evidence.

The Agent testified that he received the hearing package, all three Amendments and the Tenants’ evidence and raised no issues in this regard.

The Tenants had not received the Landlord’s evidence. The Agent advised the evidence was not served on the Tenants. I heard the parties on whether the evidence

should be admitted or excluded. I excluded the evidence given it was not served on the Tenants as required by the Rules of Procedure (the "Rules"). I found it would be prejudicial to the Tenants to consider evidence they had not received.

The Tenants confirmed at the outset they are no longer seeking an Order of Possession or an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. The Tenants confirmed the only remaining issue is the request for monetary compensation in the amount of \$366.97.

I note that the Tenants had separate tenancy agreements with the Landlord and therefore should have made two separate Applications for Dispute Resolution. However, rule 2.10 of the Rules states:

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

The circumstances meet the above criteria and therefore I allowed the Tenants to proceed with the Application as is.

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

Preliminary Issue – Jurisdiction

As outlined in the evidence and submissions below, the Tenants rented one bedroom in a three-bedroom condo from the Landlord. The Landlord later changed her position

about the tenancy agreements stating the Tenants were to be roommates and could no longer have the bedroom originally discussed. The Landlord returned the security deposits which were accepted by the Tenants. The Tenants found another place to live and are now seeking compensation for the situation.

The Agent raised a preliminary issue in relation to the jurisdiction of the RTB to decide this matter.

Two written tenancy agreements had been submitted in evidence. Both are on the "Residential Tenancy Agreement" RTB form.

The first tenancy agreement is between the Landlord and Tenant J.M. in relation to the rental unit. The tenancy was to start May 01, 2019 and was for a fixed term ending August 31, 2019. The agreement has a vacate clause stating it is a sublet. Both the Landlord and Tenant initialled the vacate clause. Rent was to be \$475.00 per month due on the 15th day of each month. A security deposit of \$235.00 was paid. The agreement was signed by the Landlord and Tenant.

The second tenancy agreement is between the Landlord and Tenant C.B. in relation to the rental unit. The tenancy was to start May 01, 2019 and was for a fixed term ending August 31, 2019. The agreement has a vacate clause stating it is a sublet. Both the Landlord and Tenant initialled the vacate clause. Rent was to be \$475.00 per month due on the 15th day of each month. A security deposit of \$235.00 was paid. The agreement was signed by the Landlord and Tenant.

The Tenants testified that the above tenancy agreements are accurate. The Agent agreed the tenancy agreements are the papers signed by the parties. All parties agreed the tenancy agreements were signed by both parties by April 01, 2019. Tenant J.M. and the Agent agreed Tenant J.M. paid the security deposit April 07, 2019. Tenant C.B. and the Agent agreed Tenant C.B. paid the security deposit April 10, 2019.

The Agent took the position that the RTB does not have jurisdiction to decide this matter as the *Residential Tenancy Act* (the "Act") does not apply. He provided the following testimony and submissions.

The Landlord is an "owner in trust" of the rental unit. He agreed the Landlord is not on title as an owner of the rental unit.

The Landlord was going to share a bathroom and kitchen with the Tenants. This was going to be a roommate situation. The intention from the outset was that this would be a roommate situation. The Landlord was going to allow the Tenants to use her room. The Landlord made a mistake in relation to the tenancy agreements because if she occupies the condo she is simply allowing roommates to share it. Other space in the condo was going to be available to the Landlord and she had full access to the condo. The Landlord was going to give her room up to the Tenants and use one of the other rooms in the condo. One of the other rooms that was rented out was only rented on a temporary basis.

The conversations between the Landlord and Tenants in evidence show this was to be a roommate situation. This is shown in the conversations by the use of “roommate” and references to the Landlord’s room.

The Agent could not point to what section of the *Act* he was relying on for his argument. I read the Agent section 4(c) of the *Act* and the Agent said this section sounds like the one he is relying on.

The Tenants took the position that the RTB does have jurisdiction and that the *Act* does apply. Tenant J.M. provided the following testimony and submissions.

This was going to be a sublet. This is confirmed in the tenancy agreement. There is no evidence that the Landlord ever informed the Tenants that she would be living in the condo with them. This was never mentioned to the Tenants. The Tenants understood that the Landlord would not be residing in the condo. The conversations in evidence show that the intention was that the Tenants would occupy one room, another individual would occupy a second room and the third would remain unoccupied for the summer. There is no indication on the Land Title Search submitted that the Landlord is an owner of the condo.

Section 4(c) of the *Act* states:

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation...(emphasis added)

I do not accept that the Landlord is an owner of the condo given there is no indication of this on the Land Title Search submitted and the Agent agreed her name is not on title. No evidence has been submitted or is admissible in relation to the Agent's position that the Landlord is an "owner in trust" and therefore I do not accept this. Therefore, section 4(c) of the *Act* does not apply to the circumstances.

The definition of "landlord" in section 1 of the *Act* is 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;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit...

I do not accept that the Landlord intended to occupy the condo as claimed by the Agent. The following messages from the Landlord to the Tenants support the Tenants' position that this was never the Landlord's intention and contradict the Agent's position that this was the Landlord's intention:

Yes, I would be willing to consider it as only two of the three rooms will be occupied over the summer...

Hi, I've found someone to rent the far bedroom for the summer but not the bedroom directly next to yours, he's a software engineering student who'll be leasing for a year.

I have a pharmacy student who will doing her practicum renting the third bedroom just for the month of May

In response, the Tenants told the Landlord they assumed the third room would be empty and asked if the Landlord would agree that the room will be unoccupied for the rest of the summer. The Landlord says she did not realise the Tenants assumed the third bedroom would be unoccupied and says she will have to discuss the matter with her parents before giving a definite answer. The Landlord then sends the following messages:

...I am unable to accommodate your request to have the third bedroom unoccupied for the majority of the summer unless you and [Tenant C.B.] are willing to pay an additional \$850 a month for the cost of renting out the other room as well. If the other room is unoccupied I will losing \$850 a month towards the mortgage and strata fees.

I understand how you could have misunderstood, but at the time when I showed you the condo and we made an agreement, we were only showing the two smaller bedrooms with my bedroom being unlisted which I offered to you with the intention of renting all three rooms.

It may not have been expressed to you but upon offering you my bedroom to rent it made it possible for us the rent the remaining bedroom which was our intention when offering my bedroom to you...

I find it clear from the messages that the Landlord intended at the outset to rent out two rooms and leave the third empty and then decided to rent out all three rooms. It is not until the Tenants took issue with the Landlord renting the third bedroom that the Landlord sent the Tenants the following message:

...after consulting with my lawyer I have been supplied information that clarifies this situation and the type of agreement we are engaged in. There seems to be a misunderstanding. I am the owner and I will continue to live in my home. My bedroom will no longer be available. Although I have had you sign the tenancy

agreement in error, you are actually agreeing to a roommate contract. As discussed in our previous conversations you were made aware that there would be other roommates. I have decided not to offer my room for your convenience and therefore only the smaller middle room is available. If this does not work for either of you I will return gladly your damage deposit. If you choose these conditions I will forward the roommate agreement for May 1 to August 31, 2019.

The Tenants state in their written material that they received the above message April 26, 2019.

There is no issue that the tenancy agreements were entered into April 01, 2019. At this point, the parties were bound by these agreements pursuant to section 16 of the *Act*. The Landlord had no authority to change her mind about the situation on April 26, 2019 as she had no authority to simply end the tenancies without doing so in compliance with the *Act*.

Further, I do not accept that the April 26, 2019 message is an accurate summary of the parties' intentions given the position outlined only arose after the Tenants disagreed with Landlord about renting the third bedroom. None of the prior communications indicate that the parties were entering into a roommate agreement. I note that whether the Tenants themselves were going to have third party roommates is not the issue as this does not preclude application of the *Act*. I also note that I do not find the April 26, 2019 message accurate as the Landlord is not an owner of the condo as that term is used in the *Act*.

I have also considered the following in determining that I do not accept the Agent's position that the Landlord intended to occupy the condo during the tenancies.

The Landlord entered into residential tenancy agreements with the Tenants. The agreements refer to them being sublets which, as explained in Policy Guideline 19, applies where the original tenant vacates the rental unit granting exclusive occupancy to subtenants.

The references to "roommate" in the messages are the Landlord referring to her roommate at the time of the communications, which was prior to the tenancies. This does not show that the Landlord intended to occupy the condo during the tenancies and has no bearing on the relationship created between the Landlord and Tenants through the tenancy agreements.

The Landlord rented her own bedroom to the Tenants. It does not accord with common sense that the Landlord would do this if she intended to continue occupying the condo, particularly when the Tenants told her they were interested in one of the other rooms on March 27, 2019 as shown in the evidence. I note that the Landlord renting out her own room does not change the nature of the relationship created between the parties as suggested by the Agent as this does not preclude application of the *Act*.

There is nothing in the messages submitted that suggests the Landlord intended to occupy the condo during the tenancies.

The messages show an intention to rent out all three rooms which would have left no room for the Landlord. This does not accord with an intention to occupy the rental unit.

The Landlord did not attend the hearing to provide affirmed testimony or to be questioned about that testimony. This is so despite the issue being her own intention when she entered into tenancy agreements with the Tenants.

In the circumstances, I do not accept that the Landlord intended to occupy the condo during the tenancies prior to, or at the time of signing, the tenancy agreements.

I am satisfied the Landlord is a “landlord” as that term is defined in section 1 of the *Act*. I find the *Act* applies to the parties.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought the following compensation:

1	Filing fee	\$100.00
2	Time and suffering	\$227.70
3	Land Title Search	\$12.42
4	Next day shipping	\$21.73
5	Regular mail	\$5.12
	TOTAL	\$366.97

Filing fee

Tenant J.M. testified that the Tenants originally applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement because the parties agreed only two of the three rooms in the condo would be occupied. The Tenants' position is that the Landlord did not comply with that agreement when she rented out the third bedroom. The Tenants wanted an order that the Landlord comply with the agreement.

The Agent submitted that this issue should not be considered because of the subsequent Amendments.

Time and suffering

Tenant J.M. testified as follows. The Tenants are seeking compensation because of the emotional turmoil and stress that the Landlord caused. The conversations about the tenancies were occurring in the middle of exam period. She calculated the time spent dealing with these tenancies at minimum wage as follows:

April 20 – April 22	Communication with landlord, Research	3 hours
April 23	Contacting RTB, filing Dispute Resolution	2 hours
April 24 – April 25	Research, Submitting evidence	2 hours
April 26	Contacting RTB, Research, Filing amendment	3 hours
April 26	Looking for new housing	3 hours
April 27	Touring possible housing	1 hour
April 28	Paperwork for new housing	2 hours
April 30	Contacting RTB, Filing Amendment	2 hours
		Total: 18 hours
		18 hours @ minimum wage (18)(12.65) = 227.70

Tenant J.M. testified that the above table relates to the following:

- To do research about resources and recourse for the Landlord breaching the *Act* when the Landlord said she would not hold up her end of the agreements
- The time it took to file the dispute and look into the issues, talking to the RTB

- The time it took to file the Amendments at Service BC
- Time spent looking for new housing, touring possible housing and doing paperwork for new housing

Tenant J.M. further testified as follows. When the Landlord said she would not comply with the tenancy agreements, the Tenants had to file the Application. The Landlord gave the security deposits back without consent. The Tenants had four days to find a new place. This was extremely distressing. The Tenants thought they were going to be homeless with nowhere to go. The Tenants had to view new places. The Tenants had to get money for new deposits. They found a new place April 30, 2019.

Tenant J.M. submitted that the Landlord failed to comply with the *Act* by renting out the third room. She submitted that the Landlord was not allowed to just cancel the tenancy agreements without notice.

The Agent testified that the Tenants accepted the security deposits back. He said the Landlord offered to re-write the paperwork to be roommate agreements, but the Tenants ignored this. The Agent testified that the Tenants stopped corresponding with the Landlord after April 21, 2019.

In reply, Tenant J.M. said the Landlord did not give a deadline to respond about the roommate agreements and that the Tenants were given an ultimatum to either sign new agreements or have nowhere to live. Tenant J.M. testified that the Landlord had no regard for the *Act* and so the Tenants did not want to try to move in and that the Tenants needed the security deposits for a new place.

Land Title Search

Tenant J.M. testified that the Tenants were advised to do a Land Title Search after the Landlord sent them the message about owning the condo because they knew this would be an issue at the hearing. She said the Tenants would not have done this if the Landlord had been honest with them.

The Agent testified that communication between the parties stopped and that the issues could have been resolved without the Tenants filing the Application and Amendments.

Next day shipping

Tenant J.M. testified that this cost relates to her having to serve the Landlord with documents for the hearing.

Regular mail

Tenant J.M. testified that this cost relates to her having to serve the Landlord with documents for the hearing.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Policy Guideline 16 also states that loss can include damage to a person, including both physical and mental.

In my view, applicants are not entitled to compensation for the costs associated with preparing for hearings such as obtaining information or legal advice, preparing evidence

or serving documents. Therefore, I do not find the Tenants are entitled to compensation for the Land Title Search, next day shipping or regular mail costs.

In relation to “time and suffering”, I agree the Landlord breached the *Act*. As already stated, the parties were bound by the tenancy agreements as of April 01, 2019. The Landlord had no authority to unilaterally change those agreements or to end the tenancies, which I find she did in the April 26, 2019 email, except in accordance with the *Act*.

I accept that loss or damage resulted. I accept that the Tenants had to find a new place to live in four days given the breach by the Landlord. I accept that this took time and was stressful for the Tenants.

However, I do not accept that the Tenants are entitled to compensation for many of the reasons outlined in the table above as I find these relate to preparing for the hearing. Further, I find that claims involving stress should be supported by medical or similar evidence showing the stress caused.

I am satisfied the Tenants are entitled to compensation for the time it took to find a new place in four days. I note that the Tenants did apply for an Order of Possession on April 26, 2019, when they received the message from the Landlord. This was the correct course of action to take. However, I also note that the hearing was still almost a month away at that point. Therefore, the Tenants would still have had to look for a new place to live. I find it reasonable that the Tenants did not decide to show up at the condo and attempt to move in on May 01, 2019 given the Landlord’s message on April 26, 2019.

I am satisfied the Tenants are entitled to compensation for the six hours spent in relation to finding new housing. The Tenants have calculated this at minimum wage of \$12.65. Therefore, I am satisfied the Tenants are entitled to \$75.90. I find this amount to be reasonable in the circumstances.

Given the Tenants have been partially successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

The Tenants are entitled to a Monetary Order for \$175.90 and I issue this pursuant to section 67 of the *Act*.

Conclusion

The Tenants are entitled to a Monetary Order for \$175.90. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: June 20, 2019

Residential Tenancy Branch