



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CKL INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AAT, PSF, MNDCT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests, pursuant to section 70;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

"Tenant CO" did not attend this hearing, which lasted approximately 32 minutes. Tenant LB ("tenant"), the tenants' advocate, the landlord's agent ("landlord"), and the landlord's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he was the vice president of the landlord company named in this application and that he had permission to speak on its behalf at this hearing. The landlord confirmed that his lawyer had permission to speak on behalf of the landlord company. The tenant confirmed that she had permission to represent tenant CO (collectively "tenants") and that her advocate had permission to represent both tenants at this hearing.

The landlord's lawyer confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The tenants' advocate confirmed receipt of the landlord's written evidence package. She said that she received it by email on October 24, 2019 and that she reviewed it, but it was late, so she objected to me considering the evidence. The tenant said that she did not understand the Court case submitted by the landlord. I notified both parties that I would consider the landlord's evidence at the hearing and in my decision. Although the evidence was late, as it was received by the tenants less than 7 days prior to the hearing date, contrary to Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, the tenants received it and had a chance to review it prior to the hearing. I find that the tenants failed to show that they suffered any prejudice. Although the tenant did not understand the Court case, this does not demonstrate prejudice, as the tenant agreed that she had a chance to consult her advocate and speak to the landlord's lawyer about the case submitted. The tenants also had a chance to consult their own lawyer prior to this hearing.

At the outset of the hearing, I asked both parties to provide verbal submissions on whether I had jurisdiction to hear the tenants' application under the *Act*, as the landlord's lawyer raised the issue at the hearing and in the landlord's written evidence.

### Issue to be Decided

Does the RTB have jurisdiction to consider the tenants' application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The landlord's lawyer stated the following facts. The RTB has no jurisdiction to hear the tenants' application. The tenants are victims of fraud from the landlord's former caretaker ("caretaker") who was employed by the landlord company at the rental building. The caretaker showed the tenants the rental unit that was occupied by another tenant ("occupant"). The caretaker signed a new tenancy agreement with the tenants, while personally collecting the rent and security deposit from them. The landlord company owns the rental unit and was not aware of the caretaker's actions. The caretaker was not given authorization to re-rent or collect money from the tenants for the rental unit. The landlord provided a copy of the written tenancy agreement between the landlord company and the occupant, for the same rental unit, for the period from October 1, 2015 to present, on a month-to-month basis. The tenancy agreement

was signed by the occupant and the authorized caretaker employee of the landlord company.

The landlord's lawyer stated the following facts. The landlord does not dispute that the tenants paid rent and a security deposit as well as other expenses to the caretaker. Residential Tenancy Policy Guideline 27 states that when entering into a tenancy, the landlord transfers its possessory rights to a tenant in a tenancy agreement. Paragraphs 78 and 79 of the Court case submitted by the landlord for this hearing, references the common law included in section 91 of the *Act*, which states that a party cannot give what a party does not have. There was no tenancy created between the landlord and the tenants because no interest could be claimed or transferred by the caretaker, since the unit was already rented to the other occupant under a valid tenancy agreement. The RTB only has jurisdiction over tenancy agreements. The tenant has a remedy against the caretaker at the Courts or the Civil Resolution Tribunal. When the landlord discovered that the caretaker defrauded the tenants, other occupants and the landlord, the caretaker's employment was terminated for cause on September 1, 2019.

The tenant's advocate stated the following facts. The RTB has jurisdiction over this application. The tenants paid first month's rent and a security deposit to the landlord's caretaker, with whom a tenancy agreement was also signed. A copy of this tenancy agreement was provided by the tenants. This created a valid tenancy, so the landlord company is responsible to pay for the tenants' expenses, since their employee defrauded the tenants. The caretaker was a building manager, rather than a caretaker, as noted in the tenants' evidence. The landlord's company name was included on the tenants' written tenancy agreement. The landlord is required to find a new rental unit for the tenants or provide them with compensation for their losses. The tenants agree that this is a case of fraud but claim that the caretaker was an agent of the landlord and worked there in his capacity as an employee.

The tenant stated that she was shown the rental unit by the caretaker and was told that the tenant living there at the time, would be evicted. She said that she believed the eviction would happen because the rental unit was not in good shape. She claimed that once she signed the tenancy agreement and money exchanged hands, as her rent and security deposit cheques were cashed by the caretaker, a tenancy was created.

### Analysis

I must decide jurisdiction with respect to the rental unit in question, as both parties dispute whether a tenancy was created.

The jurisdiction of the *Act*, and in turn my jurisdiction, is set out in section 2 of the *Act*. Subsection 2(1) of the *Act* sets out that:

*2 (1) Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.*

“Tenancy agreement” is defined in section 1 of the *Act* (my emphasis added):

*"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...*

“Landlord” is defined, in part, in section 1 of the *Act* (my emphasis added):

*"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;**
- (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;**

Section 6, in part, indicates that the *Act* is enforceable between a landlord and tenant:

*6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*

Residential Tenancy Policy Guideline 27 deals with jurisdiction and notes in part:

## 2. TRANSFERRING OWNERSHIP

**A tenancy agreement transfers a landlord's possessory rights to a tenant.** *It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:*

- *money exchanged was rent or was applied to a purchase price;*
- *the agreement transferred an interest higher than the right to possession;*
- *there was a right to purchase in a tenancy agreement and whether it was exercised.*

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention, no enforceable agreement under the *Act* arises from the relationship.

The tenants were informed at the time they viewed the rental unit and spoke to the caretaker, that another tenant was residing there and in possession of the unit. They claim that they were told the existing tenant would be evicted but there was no confirmation of this fact. The tenants agreed that this was a case of fraud. Fraud is a criminal matter that is not within the jurisdiction of the RTB.

The landlord company, not an individual, is the owner of the rental unit. The caretaker who signed the tenancy agreement with the tenants was employed by the landlord company at the time that the agreement was entered on July 29, 2019. The caretaker included his individual name as a landlord on page 1 of the tenancy agreement and signed the agreement in his individual name only, not the landlord company name or his position as a caretaker or building manager, on page 6 of the tenancy agreement. The tenants did not sign the tenancy agreement on page 6, despite the fact that both their names were included on pages 1 and 6. Page 6 of the tenancy agreement indicates "By signing this tenancy agreement, the landlord and the tenant are bound by its terms."

The caretaker was not entitled to possession of the rental unit, as per section 1 of the *Act* under the definition of a landlord, as another tenant had a valid signed tenancy agreement in place, since October 1, 2015, to the present date. A copy of that written tenancy agreement was provided by the landlord and is signed by the occupant and another landlord building caretaker, who identified the landlord by the landlord company named on pages 1 and 6 of the tenancy agreement. That caretaker did not sign the tenancy agreement in her individual name only, as was in this tenants' case. She included her name in her employment capacity as a building caretaker, directly under the name of the landlord company owner.

I find that the caretaker who signed the tenancy agreement did not have authorization to enter into the agreement on behalf of the landlord company, with the tenants. Therefore, the landlord company, as the owner of the rental unit, had no intention to enter into a legal relationship, as contemplated by a tenancy agreement. The landlord confirmed that this caretaker entered into this tenancy agreement without the knowledge or permission of the landlord company owner. Since the rental unit was occupied by another tenant at the time that the caretaker signed the agreement, the landlord had no ability to convey any possession rights to the tenants, as per Residential Tenancy Policy Guideline 27.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenants' application.

### Conclusion

I decline jurisdiction over the tenants' application.

I make no determination on the merits of the tenants' application.

Nothing in my decision prevents either party from advancing their claims before a 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 28, 2019

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Residential Tenancy Branch