



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, OPT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order of possession for the tenants pursuant to section 54;
- An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72.

The applicants attended with their advocate JL (“the tenants”). The respondent attended with his lawyer (“the landlord”). The landlord called two witnesses, LC and AT, who were affirmed. Both parties provided affirmed evidence, submitted documents and had the opportunity to examine witnesses.

The landlords acknowledged service of the Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord’s materials. No issues of service were raised. I find the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*.

The hearing process was explained, and all parties had the opportunity to ask questions.

Preliminary Matter

At the outset, the landlord raised the issue of jurisdiction of the RTB to hear the tenants' claims. The landlord asserted that the situation did not involve a tenancy governed by the Act.

Preliminary Issue(s) to be Decided

Does the RTB have jurisdiction over this claim?

Background and Evidence

The hearing last four hours and 41 minutes. Considerable evidence, much of it conflicting and including several Affidavits, was presented by both parties. While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The landlord testified as follows. He rents properties as a business and is an experienced landlord. He has an office with an office manager who has worked with him for ten years.

The landlord entered into a month-to-month tenancy agreement with AT which began about ten years ago. In the fall of 2019, the landlord and AT verbally agreed that the rent of \$1,100.00 would be increased on January 1, 2020 to \$1,300.00 monthly payable on the first of the month.

On January 3, 2020, AT provided notice to the landlord that she was leaving the unit on January 31, 2020. The landlord accepted the notice. AT told the landlord that MP and CL were guests and they would be moving out. AT, who was called as a witness during the hearing, concurred with the landlord's evidence in this regard.

The tenants testified as follows. They moved in to the unit in early 2019 as guests of AT and stayed. Over time, they started paying the rent in its entirety. AT was gone much or all the time. The tenants took the rent each month to the landlord's office. They decided they wanted to take over the unit when AT left.

Both parties agreed that on January 1, 2020, the tenant MP took \$1,100.00 to the landlord's office to pay rent for January and was informed of the rent increase. The tenant MP left and returned to the landlord's office on January 3, 2020 and paid \$1,300.00 for January's rent. The landlord issued a receipt, a copy of which was submitted as evidence, which stated that the receipt was "in trust for AT".

The tenant MP claimed that during this meeting, the landlord agreed to rent the unit to the tenants. MP stated that he asked if he and tenant CL could "take over" the tenancy from AT. The landlord asked him if he was a "criminal or used drugs". The tenant denied both. The landlord then agreed to rent the unit to the tenants. The landlord then asked for references which tenant MP later provided.

The landlord vehemently disagreed with the tenant MP's account of this meeting. The landlord testified that he told the tenant MP that he, the landlord, would consider MP and CL as tenants **only** after he received references as was his regular practice.

The landlord said he did not personally know the tenants. In support of this version of the encounter, the landlord called his office manager LC who provided affirmed testimony confirming the landlord's explanation and his practice.

The landlord testified that, until this time, he did not know that the MP and CL were living in the unit.

The landlord and AT agreed that AT warned the landlord to be cautious about renting to MP and CL. The landlord testified that as a result of this warning, he conducted an internet search shortly after the meeting of January 3, 2020 which provided information leading him to believe that tenant MP was an undesirable potential tenant. The landlord concluded that the tenant MP had lied when he said he was not a criminal and did not do drugs. The landlord decided not to rent the unit to MP and CL and informed them of his decision on or about January 6, 2020.

During the hearing, the tenant MP acknowledged his criminal record. He testified that he was under house arrest during the time he was living in the unit. He acknowledged that he denied that he was a criminal or a drug user at the time the landlord posed the questions.

AT testified that she moved out of the unit shortly after giving her notice to the landlord on January 3, 2020 and that she expected the tenants would move out by the end of January.

While moving her possessions out of the unit, AT stated that the tenant MP threatened her with “a jerry can and a flame” over a disagreement and that she feared for her safety. The tenant MP acknowledged the disagreement but testified AT unfairly magnified what took place.

The parties agreed that the landlord notified the tenants of his decision not to rent to them on or about January 6, 2020 and that they had to move out by the end of the month. The tenants responded that they “would try” to move out by then.

When they failed to leave by the end of January 2020, the landlord provided lengthy testimony of his efforts to get the tenants to leave. This included reporting the matter to the RCMP and to bailiffs, both of whom declined to physically remove the tenants without a court order as the tenants said they had a “verbal tenancy agreement”. The landlord went to the unit. The landlord testified that he had the utilities and water to the unit cut off and that he later reconnected the water as the tenants were using a hose from another residence. The landlord informed his insurer that there were “unauthorized occupants” in the unit.

The tenants testified they attempted to pay February’s rent, an assertion denied by the landlord and the office manager LC. The tenants submitted no documentary evidence to support this assertion.

AT testified that AT’s mother lived in the adjoining duplex to the unit. AT stated that her mother was afraid of the tenants who threatened to “burn the [AT’s mother’s] place down”, an allegation which was denied by the tenants.

The landlord stated that on February 18, 2020, he received a call from AT’s mother that the tenants were not in the unit; the landlord immediately went to the unit and locked it intending that the tenants would not get back in.

The landlord testified that the tenants then regained access to the unit. This sequence (the landlord locking the unit and the tenant gaining entry) was repeated at least one more time before the tenants started living elsewhere on shortly afterwards. The tenants claimed some of their possessions remain in the unit.

The landlord acknowledged that he did not have an order of possession to the unit and had not issued any notices, or commenced any legal proceedings.

The tenants request an order of possession to the unit asserting that a new tenancy was created on January 3, 2020 and the landlord cannot lawfully gain possession without an order under the RTA.

The landlord claimed that there was no tenancy created on January 3, 2020, that the tenancy with AT ended on January 31, 2020; the tenants had no right to remain in the unit and were like “squatters”. The landlord claimed that there was no “meeting of the minds” with the tenants and that the tenant MP should not be believed as he was unreliable and untrustworthy.

Analysis

In section 1, the Act defines a “tenancy” and a “tenancy agreement” as follows:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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;

Section 2 states as follows:

What this Act applies to

2 *(1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.*

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

Section 13 sets out the required contents of the tenancy agreement.

RTB Policy Guideline # 7 – Tenancy Agreements and Licenses to Occupy provides guidance on identifying a tenancy. The Guideline states in part:

Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

[...]

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise.

Under the Act, tenancy agreements must be in writing (although verbal agreements are recognized) in order to address the vital components of the relationship; standard clauses are deemed incorporated in all tenancy agreements. These key elements include exclusive possession and payment of a security deposit.

The landlord testified to his practice of obtaining references. This practice is in keeping with information on the RTB website suggesting that landlord do the following:

Carefully assess the suitability of any new tenant:

- *Ask for proof of identity*
- *Thoroughly check all references*
- *Contact previous landlords to ask about rental and payment history*
- *Conduct a credit check to confirm income and financial suitability*
- *Get the names of all persons to be living in the rental unit*

(source: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/starting-a-tenancy>)

I found the landlord's evidence to be forthright and credible. His testimony was supported by the witness LC, office manager, who observed the January 3, 2020 meeting between the landlord and the tenant MP and heard what was said. Both clearly stated that the landlord did NOT agree to rent the unit to the tenants. They both testified to the usual practice of requiring references from prospective tenants and that references were requested. They also issued a receipt for rent saying the payment was received on behalf of AT.

In view of their testimony and supporting documents, I give considerable weight to the landlord's evidence. I find the landlord accepted rent from the tenant MP on behalf of the tenant AT, and not as a payment made by MP. I find the landlord told MP that any rental depended on references.

I find the landlord's evidence, supported by his office manager, to be in keeping with RTB recommended practice. I find that key elements of a tenancy agreement were not agreed upon (such as a security deposit) and that without consensus on main contractual elements as set out in the Act, there was no tenancy agreement, verbal or otherwise.

On the other hand, I find the tenant MP minimized events, blamed others and sought to evade responsibility. For example, I found the evidence of AT credible. Her clear account of the event she recounted on moving out, that is, that the tenant MP threatened to harm her with flammable liquid, a potentially lethal threat, was shocking. The tenant MP said this was a "disagreement" which I find a self-serving, implausible characterization. For these reasons, I do not give any weight to the tenant MP's testimony and find him an unreliable witness.

I conclude that the landlord's version of events is reliable and credible. I find the landlord did *not* agree to rent the unit to the tenants. I find the landlord accepted rent proffered on behalf of AT, the tenant, as supported by the receipt. I find the landlord requested references in keeping with his practice. I find the landlord informed the tenants of his decision not to rent to them and that the tenants, who were not tenants, but overholding occupants, failed to meet their obligation to vacate the unit at the end of January 31, 2020 as expected by the tenant AT.

I find the tenant AT continued to occupy the unit until she vacated after providing notice to the landlord on January 3, 2020 and at no time did she assign or sub-let the unit to MP or CL. I accept AT's evidence that she paid the rent throughout the tenancy and the role of MP was to deliver AT's money, and not his own.

I find the tenants have failed to establish that a tenancy existed which is governed by the Act. I find there was no agreement that the tenants would occupy the unit with the consent of the landlord. I therefore find I do not have jurisdiction to hear this claim. I dismiss the tenants' application without leave to reapply.

Conclusion

The tenants' application is dismissed without 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: March 03, 2020

Residential Tenancy Branch