



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, FFL (Landlords)
 CNE-MT, OLC, RP, LAT (Occupants)

Introduction

This hearing was convened by way of conference call in relation to Applications for Dispute Resolution which were crossed.

The Occupants filed an Application for Dispute Resolution on February 20, 2020 (the "Occupants' Application"). The Occupants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause served February 01, 2020;
- For an order that the Landlords comply with the Act, regulation and/or the tenancy agreement;
- For repairs; and
- For authorization to change the locks.

The Landlords filed an Application for Dispute Resolution on February 21, 2020 (the "Landlords' Application"). The Landlords applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated February 01, 2020 (the "Notice"). The Landlords also sought to recover unpaid rent and reimbursement for the filing fee.

The Landlords appeared at the hearing with Counsel and the Articling Student. The Co-owner also appeared at the hearing. The Co-owner was named as a landlord in the Occupants' Application. The Co-owner advised that he is not a landlord in this matter. The parties agreed to me removing the Co-owner from the Occupants' Application. This change is reflected in the style of cause.

The Tenant did not appear at the hearing.

H.S. appeared at the hearing for the Occupants.

I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

Counsel confirmed the Landlords received the hearing package and evidence for the Occupants' Application.

Counsel advised that the hearing package for the Landlords' Application was served on the Tenant in person immediately after it was received from the RTB. RTB records show the hearing package was available March 04, 2020. Landlord R.M. testified that the hearing package was served on the Tenant in person around March 05, 2020. Counsel confirmed the hearing package was only served on the Tenant because the Landlords only named the Tenant in the Landlords' Application and not the Occupants.

H.S. confirmed the Occupants did not receive the hearing package for the Landlords' Application. H.S. confirmed the Occupants received the Landlords' evidence. H.S. initially raised an issue about a letter from the Tenant and e-transfer history served the week before the hearing. However, upon further discussion, H.S. confirmed she was not taking issue with admissibility of the e-transfer history. H.S. also confirmed she had read the letter from the Tenant and acknowledged there was no prejudice in admitting it.

Pursuant to rule 3.17 of the Rules of Procedure, I admit the letter from the Tenant given H.S. acknowledged there was no prejudice in doing so. I also do so because it is a one-page letter and H.S. confirmed she had an opportunity to review it.

The main issue in this matter was whether the Occupants are tenants in relation to the rental unit. The Landlords took the position that the Occupants are occupants and not tenants. The Occupants took the position they are tenants. I address this issue first as it affects the decision on service.

Preliminary Issue: Occupants or Tenants

Counsel made the following submissions.

S.G. is the tenant of the rental unit. H.S. and S.C. are occupants of the rental unit.

The Landlords entered into a written tenancy agreement with the Tenant in October of 2019. In mid-December of 2019, H.S. and S.C. moved in with the Tenant. The addendum to the tenancy agreement said there were to be no occupants; however, the Landlords did not take issue with H.S. and S.C. moving in.

H.S. requested a meeting with the Landlords mid-December. The parties met and the Occupants asked the Landlords to sign a new tenancy agreement. The Landlords told them they would if the Tenant agreed.

The Tenant paid full rent to the Landlords for October, November and December. The Occupants did not pay rent to the Landlords for these months. In January, the Occupants paid \$600.00 towards rent.

On January 29, 2020, Landlord R.M. received text messages from H.S. saying the Tenant was out of the rental unit for good. Landlord R.M. asked the Tenant what was going on and he advised he had no intention of ending the tenancy. The Occupants forced the Tenant to move out of the property. The Occupants have attempted to pay rent from February on, but the Landlords have not accepted rent because they do not want to enter into a new tenancy agreement with the Occupants.

The Landlords only ever had a tenancy agreement with the Tenant. H.S. had filled out a written tenancy agreement where both the Tenant and Occupants were named as tenants. The Landlords never signed this and were clear that there would be no new tenancy agreement unless the Tenant agreed. The Tenant never agreed to a new tenancy agreement. The tenancy agreement with the Tenant is still ongoing.

Counsel referred to text messages that the Landlords submit support their position.

The Landlords submitted a written tenancy agreement with the Tenant signed by the parties October 16, 2019.

The Landlords submitted a signed letter from the Tenant stating he was assaulted by the Occupants January 27, 2020 and left the rental unit January 29, 2020. He states he was told by police not to remain in the rental unit for his own safety.

H.S. testified as follows. Her and S.C. started living at the rental unit after October 01, 2019. They did start as occupants. She requested a meeting with the Landlords to discuss issues with the Tenant. During the meeting, Landlord R.M. completed a written tenancy agreement that H.S. and S.C. signed. The written tenancy agreement only

named H.S. and S.C. as tenants and not the Tenant. She is not sure whether the Landlords signed the tenancy agreement. Landlord R.M. called the gas company and told them H.S. and S.C. were the new tenants of the rental unit. She put the gas account in her name. H.S. and S.C. paid January rent and were issued a receipt for this.

H.S. referred to text messages she submits support her position.

Decision on Preliminary Issue

Policy Guideline 13 addresses occupants and states in part:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Policy Guideline 19 addresses occupants and states in part:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act...

...Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

I accept that H.S. and S.C. moved into the rental unit as occupants as H.S. acknowledged this.

H.S. took the position that H.S. and S.C. became tenants after the December meeting. I do not accept this.

At the time of the December meeting, the Landlords had an ongoing tenancy agreement with the Tenant. I am not satisfied based on the evidence provided that this tenancy agreement had ended in accordance with the *Act*. The Landlords could not have simply entered into a new tenancy agreement for the rental unit with H.S. and S.C. alone without ending the tenancy agreement with the Tenant in accordance with the *Act*. I find it more likely that the parties discussed entering a new written tenancy agreement with the Tenant, H.S. and S.C. named as tenants. The Tenant would have had to agree to this. I find it more likely that this is the discussion the parties had during the December meeting.

I am not satisfied a written tenancy agreement naming the Tenant, H.S. and S.C. as tenants was entered into by the parties. There is insufficient evidence before me that the Tenant agreed to adding H.S. and S.C. as tenants. There is no written tenancy agreement before me showing this occurred.

I am not satisfied a written tenancy agreement naming H.S. and S.C. as tenants was entered into by the parties. There is no written tenancy agreement before me showing this occurred. Further, H.S. was not sure that the Landlords signed the written tenancy agreement she referred to during her testimony.

I acknowledge that parties can enter into verbal tenancy agreements. I do not accept that this occurred for the following reasons. The Landlords had an ongoing written tenancy agreement with the Tenant. It is clear from the testimony of both parties that both parties contemplated entering into a new written tenancy agreement, not that there would be a verbal agreement. The parties disagree that they entered into a tenancy agreement. The evidence presented does not satisfy me that the Landlords entered into a tenancy agreement with H.S. and S.C. I do not find that the documentary evidence shows a clear agreement between the Landlords and H.S. and S.C. about a tenancy agreement. Further, the documentary evidence shows both parties said and did things that both support and contradict their respective positions.

In the circumstances, I am not satisfied H.S. and S.C. became tenants in relation to the rental unit. I find it more likely that H.S. and S.C. were, and continue to be, occupants in relation to the rental unit. Therefore, I find that H.S. and S.C. have no rights or obligations under the *Act* in relation to the rental unit.

Occupants' Application

Given the Occupants have no rights or obligations under the *Act* in relation to the rental unit, the Occupants have no ability to make the claims raised in the Occupants' Application against the Landlords in relation to the rental unit. The Occupants' Application is therefore dismissed without leave to re-apply.

Landlords' Application

Based on the submissions of Counsel and undisputed testimony of Landlord R.M., I am satisfied the hearing package for the Landlords' Application was served on the Tenant in person around March 05, 2020. I am satisfied it was served in accordance with section 89(1)(a) of the *Act*. I am satisfied it was served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Tenant. The parties present were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence pointed to during the hearing and the oral testimony provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession based on the Notice?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

As stated, a written tenancy agreement was submitted as evidence. It is between the Landlords and Tenant in relation to the rental unit. The tenancy started October 05, 2019 and is a month-to-month tenancy. Rent is \$800.00 per month due on the first day of each month. The agreement includes an addendum that is signed for the Landlords and by the Tenant.

The Landlords submitted a copy of the Notice. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by Landlord R.M. It has an effective date of March 01, 2020. The grounds for the Notice are as follows:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the Tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the Landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord

Counsel confirmed both pages of the Notice were served on the Tenant in person February 01, 2020.

Counsel advised the Tenant did not dispute the Notice.

Counsel advised the Landlords are seeking unpaid rent for February, March and April. Counsel confirmed the Tenant never ended the tenancy in accordance with the *Act*. Counsel confirmed the Tenant did not have authority under the *Act* to withhold rent.

Analysis

The Notice was issued under section 47 of the *Act*.

The Tenant had 10 days from receipt of the Notice to dispute it under section 47(4) of the *Act*.

I am satisfied based on the submission of Counsel that the Notice was served on the Tenant in person February 01, 2020. The Notice was served in accordance with section 88(a) of the *Act*.

Based on the submission of Counsel, I am satisfied the Tenant did not dispute the Notice. I have no evidence before me that the Tenant did.

I acknowledge that the Occupants disputed the Notice. However, the Occupants have no authority to dispute the Notice.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

I find section 47(5) of the *Act* applies. The Tenant is conclusively presumed to have accepted that the tenancy ended March 31, 2020, the corrected effective date of the Notice. The Tenant was required to vacate the rental unit by March 31, 2020.

The Landlords are entitled to an Order of Possession. I issue the Landlords an Order of Possession effective two days after service on the Tenant pursuant to section 55(2)(b) of the *Act*.

In relation to unpaid rent, section 7(1) of the *Act* states:

If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied based on the written tenancy agreement that the Tenant owed \$800.00 in rent per month by the first day of each month.

I am satisfied based on the submission of Counsel that the Tenant did not pay rent for February, March or April. I am satisfied the Tenant did not have authority under the *Act* to withhold rent.

I am satisfied the Landlords are entitled to recover rent for February and March while this tenancy was ongoing. I am not satisfied the Landlords are entitled to recover rent for April when this tenancy had ended pursuant to the undisputed Notice given the Tenant had not resided at the rental unit since the end of January.

The Landlords are entitled to recover unpaid rent for February and March, and I award the Landlords \$1,600.00 pursuant to section 67 of the *Act*.

As the Landlords were successful in this application, I award the Landlords \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to \$1,700.00 and I issue the Landlords a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Occupants' Application is dismissed without leave to re-apply as the Occupants have no rights or obligations under the *Act* in relation to the rental unit.

The Landlords are issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court **SUBJECT TO THE MINISTERIAL ORDER REFERRED TO ON THE LAST PAGE OF THIS DECISION.**

The Landlords are entitled to \$1,700.00 and are issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court 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: April 27, 2019

Residential Tenancy Branch