



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, RP, AAT, PSF, OLC, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to make regular repairs to the rental unit, pursuant to section 33;
- an order to allow access to or from the rental unit for the tenants or the tenants' guests, pursuant to section 70;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Tenant RV ("occupant RV") did not attend this hearing, which lasted approximately 46 minutes. The landlord, the landlord's agent WL, the landlord's family member JY, tenant IY ("tenant"), "tenant KY" and tenant NU ("occupant NU") 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, who is the owner of the rental unit, confirmed that his agent and family member both had permission to represent him at this hearing. The tenant confirmed that he had permission to represent occupant RV at this hearing.

For ease of reference, the tenant and tenant KY are collectively referred to as “tenants” in this decision. Occupant RV and occupant NU are referred to separately. The tenant confirmed that occupant RV had already vacated the rental unit and would not be returning to it.

The landlord’s agent confirmed receipt of the tenants’ application for dispute resolution hearing package and the tenant confirmed receipt of the landlord’s evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants’ application and the tenants, occupant RV, and occupant NU were duly served with the landlord’s evidence.

The tenant confirmed that although only he received a copy of the landlord’s evidence, the tenants and occupant NU were ready to proceed with the hearing. The landlord’s agent confirmed that the landlord was also ready to proceed with this hearing.

At the outset of the hearing, the tenant confirmed that the tenants filed an amendment to remove their monetary order and their request for repairs from this application, as they did not think that they would have enough time to present it, given the magnitude of their remaining claims. The landlord did not object to same. Accordingly, these portions of the tenants’ application are dismissed with leave to reapply.

Issues to be Decided

Are the tenants entitled to an order to allow access to or from the rental unit for them or their guests?

Are the tenants entitled to an order requiring the landlord to provide services or facilities required by law?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on June 1, 2013 with the landlord and the tenant. Monthly rent in the current amount of \$2,257.20 is payable on the first day of each month. A security deposit of \$950.00 was paid by the tenant and

the landlord continues to retain this deposit. Only the landlord and the tenant signed a written tenancy agreement. Tenant KY moved into the rental unit and became a tenant with the landlord's approval. Occupant NU moved into the rental unit in mid-October 2019, despite the landlord rejecting her as a tenant. The tenant, tenant KY and occupant NU continue to reside in the rental unit. The rental unit has two bedrooms and two bathrooms and is approximately 700 square feet.

Both parties agreed to the following facts. The tenant did not get written or verbal permission from the landlord to have occupant NU move into the rental unit. The landlord notified the tenant that occupant NU was not approved to live at the rental unit, but she moved in anyway. Occupant NU did not sign a written tenancy agreement with the landlord. Occupant NU has a roommate agreement with the tenant, as she pays rent directly to him of \$800.00 each month, not to the landlord. Occupant NU is currently in India and will be returning to the rental unit soon after the covid-19 pandemic travel restrictions are lifted. Occupant NU is unemployed and has been since she moved into the rental unit.

Both parties agreed to the following facts. A settlement agreement was reached between the landlord and the tenants regarding this tenancy at a previous Residential Tenancy Branch ("RTB") hearing on December 20, 2019, after which a settlement decision, dated December 23, 2019, was issued by a different Arbitrator. The file number for that hearing appears on the front page of this decision. That settlement stated that there were only two tenants, the tenant and tenant KY, and two other occupants living at the rental unit. It stated that the tenant and tenant KY were required to provide identification documents for the above two occupants to the landlord, that the landlord would vet these occupants, that the landlord would be given two weeks' notice of any future occupants to be vetted and inform the tenants of his decision, and that the landlord only had to provide FOBs and keys for the rental property to approved occupants after they were vetted.

The tenants request that occupant NU be provided with all keys and FOBS to access the rental property and with a strata form K to be able to use the common areas at the rental property. They request that occupant NU be approved as a tenant at the rental unit.

The tenant stated that the landlord was unreasonably discriminating against occupant NU because of her country of origin and her racial background. He claimed that the landlord allowed tenant KY, who is his brother, to move into the rental unit even though he was unemployed but rejected occupant NU because she was unemployed. The

tenant maintained that strata gave him approval for five people to live at the rental unit at a time. He said that the landlord does not want any more than two occupants at the rental unit so he would never approve anyone that the tenants proposed. Occupant NH said that she had sufficient funds to sustain herself for three years without having to work and she provided this information to the landlord. The landlord's agent stated that occupant NU did not provide proof of this financial backing.

The landlord's agent stated the following facts. There was only one tenant named on the parties' written tenancy agreement. The tenant keeps bringing new occupants to the rental unit and collecting rent directly from them. The tenant has had four to five people living at the rental unit, which should only have two people, since it is two bedrooms and 700 square feet. The parties' previous RTB hearing settlement involved the tenants providing information regarding any proposed occupants to the landlord, at least two weeks in advance. Occupant NU is not employed.

Analysis

Section 1 of the *Act* defines the following:

"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;

Residential Tenancy Policy Guideline 13 states the following with respect to occupants:

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.

Residential Tenancy Policy Guideline 19 states the following with respect to roommates and occupants:

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.

Section 34 of the *Act* states that the tenant cannot assign or sublet the rental unit without the landlord's written consent. It also states that the landlord cannot unreasonably withhold permission if the tenancy is a fixed term of six months or longer. In this case, there is no proposed assignment or sublet for occupant NU to live at the rental unit. The tenants are still living in the rental unit and asking for occupant NU to be approved as a tenant to live with them at the same time in the rental unit.

As per Residential Tenancy Policy Guidelines 13 and 19 above, I find that occupant NU has no rights or obligations under the *Act* or the tenant's tenancy agreement. No written tenancy agreement was signed between the landlord and occupant NU, no verbal agreement was reached, and the landlord did not provide written or verbal permission for the tenant to have another tenant or occupant at the rental unit. The landlord specifically told the tenant that he is not permitted to have occupant NU live at the rental unit or become a tenant; yet, occupant NU still moved into the rental unit.

The parties' previous RTB settlement in December 2019 is an agreement between the parties. The landlord agreed to vet the tenants' proposed occupants and provide a decision to the tenants. The landlord vetted occupant NU and determined that she was not suitable as an occupant and informed the tenants. The landlord is not required to agree with or approve of the tenants' choices in proposed occupants. Regardless of why tenant KY was approved as an occupant, this is a separate vetting process than occupant NU. I do not find that the landlord violated the parties' settlement agreement.

Therefore, I dismiss the tenants' application for the landlord to provide the FOB, keys, and a strata form K, for occupant NU to live at and access the rental property. Occupant NU is not a tenant; she is a roommate with no rights under the *Act*. She pays rent directly to the tenant and she has no tenancy relationship with the landlord. The landlord is not required to approve of occupant NU as a tenant.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' application for: a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement; an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and an order requiring the landlord to make regular repairs to the rental unit; is dismissed with leave to reapply.

The tenants' application for: an order to allow access to or from the rental unit for the tenants or the tenants' guests; an order requiring the landlord to provide services or facilities required by law; an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement; and authorization to recover the filing fee for this 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: June 05, 2020

Residential Tenancy Branch