



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAZA88 ASP4 RESIDENTIAL LTD. PARTNERSHIP C/O
GATEWAY PROPERTY MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 14, 2020 (the “Application”). The Landlord applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property;
- For compensation for monetary loss or other money owed;
- To recover money for unpaid rent;
- To keep the security or pet damage deposits; and
- To recover the filing fee.

The Tenant appeared at the hearing with her father to assist. The Tenant appeared for Tenant B.R. The Tenant did not appear for Tenant N.S. F.M. and M.M. appeared as agents for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Numerous aspects of the Application were wrong in relation to names and the rental unit address. These errors were discussed at the hearing and the correct information is reflected on the front page of this decision.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord’s evidence.

The Tenant confirmed receipt of the hearing package and Landlord’s evidence. The Tenant also confirmed receipt of these on behalf of Tenant B.R.

In relation to Tenant N.S., F.M. advised that he was not served because the Landlord did not have a forwarding address for Tenant N.S. F.M. testified that three packages, including one for Tenant N.S., were sent to the Tenant at the Tenant's forwarding address.

The Tenant confirmed Tenant N.S. does not live with her. The Tenant testified that she tried to get the package to Tenant N.S. but he refused to take it.

The hearing package had to be served on Tenant N.S. pursuant to section 89(1) of the *Residential Tenancy Act* (the "Act") which states:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person...
- (c) by sending a copy by registered mail to the address at which the person resides...
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant...

(emphasis added)

I am satisfied the Landlord sent the hearing package and evidence to Tenant N.S. at the Tenant's address. However, I am not satisfied this is either Tenant N.S.'s residence or a forwarding address provided by Tenant N.S. Therefore, I am not satisfied Tenant N.S. was served with the hearing package in accordance with section 89(1) of the *Act* as required. Nor am I satisfied Tenant N.S. received the hearing package and evidence.

I advised the parties I was not satisfied of service of Tenant N.S. and therefore would remove him from the Application. The Tenant submitted that this is not fair as Tenant N.S. is also responsible for the issues raised in the Application. The Tenant said she has Tenant N.S.'s new address and could provide it so that the Landlord could serve Tenant N.S. and the hearing could be delayed until that occurred. F.M. advised that the Landlord did not want to adjourn the hearing.

I told the parties we would proceed. The Tenant and her father again raised that it is not fair that Tenant N.S. be removed from the Application.

For the Landlord to proceed against Tenant N.S., Tenant N.S. had to be served in accordance with the *Act*. Tenant N.S. was not served in accordance with the *Act* and therefore the Landlord cannot proceed against him.

Further, as explained to the Tenant and her father during the hearing, the Tenants were co-tenants and therefore all were responsible for fulfilling the obligations of the tenancy agreement. As explained, the Landlord could have chosen to proceed against the Tenant alone if they wished. I pointed out Policy Guideline 13 which states at pages one and two:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay \$1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

D. DEBTS OR DAMAGES

Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves. For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.

If a dispute between Susan and John occurs over debts or damages related to their co-tenancy, the two would have to resolve the matter outside of the Residential Tenancy Branch. Disputes between co-tenants are not within the jurisdiction of the RTA nor the MHPTA and cannot be resolved through the Branch.

The Landlord sought the following compensation:

- July rent \$1,644.17
- Suite cleaning \$120.00
- Parking cleaning \$180.00
- August 01 and 02, 2020 rent \$131.44
- Painting \$60.00
- Liquidated damages \$1,999.00
- Bath rub repairs \$252.00
- Bedroom door replacement \$452.00
- Caretaker's hours \$50.00

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. All three Tenants are named as tenants and signed the tenancy agreement. The Tenant advised that Tenant B.R. was a co-signer and did not live in the rental unit. The Tenant acknowledged that Tenant B.R. is responsible for fulfilling the obligations under the tenancy agreement.

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear and decide the matter. What they said during the settlement discussions would not be used by me to make a decision if the parties did not come to an agreement. If they did come to an agreement, I would write out the agreement in my written decision and issue a monetary order if necessary.

The parties agreed to discuss settlement and a discussion ensued.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I confirmed all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily and without pressure.

Settlement Agreement

The Landlord and Tenants agree as follows:

1. The Tenants agree to pay the Landlord for the compensation sought, except for the liquidated damages, suite cleaning and half of the cost of the bedroom door replacement. The remaining compensation equals \$2,543.61. The Landlord can keep the security and pet damage deposits, equalling \$1,999.00, towards this \$2,543.61. The Tenants will pay the Landlord the remaining \$544.61.
2. The parties will split the filing fee and therefore the Tenants will pay the Landlord an additional \$50.00.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlord is issued a Monetary Order for \$594.61. If the Tenants do not pay the Landlord in accordance with the above settlement agreement, this Order must be served on the Tenants. If the Tenants do 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: December 03, 2020

Residential Tenancy Branch