



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application.

Preliminary Issue: Service of Evidence

The landlord testified in the hearing that he did not receive the tenant's evidentiary materials until the day before the hearing, but confirmed that he did have the opportunity to review these materials.

In accordance with RTB Rule 10.6 Late Evidence, if a piece of evidence is not available when the applicant submits and served their evidence, the arbitrator will apply Rule 3.17

Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. In this case I am satisfied that the landlord had an opportunity to review the tenant's evidentiary materials. Accordingly, I allow the tenant's late evidence to be admitted for the purposes of this hearing.

The tenant confirmed service of the landlord's evidentiary materials, with the exception of an emailed statement that was submitted in evidence by the landlord on September 1, 2021. The landlord said he was unable to serve the tenant with this statement on time for the hearing. The tenant confirmed that they consented to the contents of this email to read out in the hearing by myself, and be admitted for the purposes of the hearing. Accordingly, the email was read out loud in the hearing, and the landlord's evidentiary materials were admitted for the purposes of the hearing.

Preliminary Issue: Tenant's Other Claims

In addition to the tenant's application for emergency repairs, the tenant also applied for several other orders including an order for the landlord to comply with the *Act* and tenancy agreement, an order to suspend or set conditions on the landlord's right to enter the rental unit or site, an order for the landlord to provide services and facilities as required by the tenancy agreement, *Act*, and regulations, an application for a rent reduction as well as a monetary order for compensation for losses or money owed. The tenant was informed that the matter was set to only deal with their application for emergency repairs.

As stated in Residential Policy Guideline #51 about Expedited Hearings "an application for an expedited hearing cannot be combined with another claim, such as a request for monetary compensation (except a request for repayment of the filing fee). For example, if a tenant applied in a single application for both emergency repairs and monetary compensation for damage to their personal property due to a plumbing leak, the matter will not be set down for an expedited hearing. To engage the expedited hearing process, the tenant would need to file one application for emergency repairs, which would be expedited, and a separate application for dispute resolution to pursue the monetary claim which would be scheduled regularly."

The tenant was informed that the hearing would proceed to deal with the tenant's application for emergency repairs only under the expedited hearing process, and the tenant has the discretion to reapply for their other claims. Liberty to reapply is not an extension of any applicable timelines.

Preliminary Issue: Attempt to Resolve The Matter by way of Mutual Agreement

The landlord responded that he had attempted to dispatch contractors to repair the issue, but that the tenant applicant had failed to accommodate these repairs. The landlord confirmed in this dispute testified that he was willing to dispatch a contractor to perform the referenced repairs in the home. The landlord testified that the repairs would take approximate 1 day to 1.5 days, and that he would provide the contact information of the tenant and the applicant in order to arrange for these repairs to be completed.

The applicant testified that due to the proximity of the bathroom to the kitchen, and the fact that the repairs would most likely take longer than a few days, the applicant felt that it was necessary for the landlord to provide alternative housing or funding for alternative housing due to the health risks. The tenant was upset and frustrated about having to deal with the outstanding issues over a long period of time, and was upset about the lack of resolution. Although the tenant did attend the hearing and provide evidence, the tenant exited the hearing at 10:06 a.m. after submissions were made by the tenant, but before any mutual agreements or resolutions could be finalized. The tenant requested that a decision be made about whether a tenancy exists between the parties, and if so, whether the landlord is obligated to perform the requested repairs. The landlord confirmed after the tenant exited that they would make arrangements for the contractor to contact the tenants to accommodate repairs in either case.

Preliminary Issue: Do I Have Jurisdiction To Hear This Matter?

I informed both parties in the hearing that I can only hear a dispute between two parties where there is a tenant and landlord relationship. In this case there is a dispute over whether there is a tenancy between the applicant JD and the landlord. The tenant testified that he resides in the lower portion of the home, while another tenant TC rents up the upper portion of the home from the same landlord, who is the named landlord in this dispute.

The tenant testified that the landlord refused to accept rent directly from them separately, or acknowledge the tenant as a separate tenant in the home, and has forced the upper tenant TC to enter into a written tenancy agreement with the landlord naming only TC as the tenant. A copy of the written tenancy agreement was submitted for this hearing where TC is the only named tenant for the entire home, with monthly rent set at \$3,400.00, payable on the first of the month. TC provided a written statement stating that the landlord has refused to issue separate receipts, and informed that if TC did not agree to the terms in the tenancy agreement, then the landlord would not rent to them. TC stated in the written statement that the landlord told him that it was no problem that TC acts as property manager, and “gave me full permission to have JD in the suite downstairs” (names replaced with initials to preserve anonymity).

Both parties provided receipts for the tenancy in the amount of \$3,400.00 for the months of July and August 2021 from TC.

The landlord testified that they had only entered into a tenancy agreement with TC, as shown by the written tenancy agreement and the rent receipts. The landlord submitted

an emailed statement dated September 1, 2021 from the landlord's property manager, LE, which stated the following (names have been replaced by initials to preserve anonymity).

"Please accept this as formal confirmation that I met with and signed the tenancy agreement with TC on April 21, 2021, as per your request.

At this time, I asked TC if he would be the only one residing in the unit before signing the Tenancy Agreement.

He confirmed that he would be living alone in the unit. At no time, during the meeting, did he mention a JD and son residing in the home or being added to the lease".

Analysis

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"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 license to occupy a rental unit.

Despite the disputed facts before me, I find that the evidence supports a tenancy between TC and the landlord in this dispute. I find that TC is the only named tenant on the written tenancy agreement, which shows monthly rent of \$3,400.00 for the entire home located at the rental address. I find that the receipts presented only show that \$3,400.00 was paid to the landlord by TC. Although TC and the applicant tenant in this dispute provided an explanation for why the receipts and tenancy agreement name only TC as the tenant, I do not find that the applicant tenant provided sufficient evidence to support the truth of these statements. Furthermore, I find the landlord provided corroborating evidence from another party, the landlord's property manager, confirming that the property manager had inquired about who would be residing in the home. Other than the testimony of the tenants TC and JD, I find that the evidence does not sufficiently support that a tenancy exists between JD and the landlord, as the term "tenancy" is defined under the *Act*. Accordingly, I find that a tenancy does not exist between the applicant and the landlord, and I am unable to consider the application as I have no jurisdiction to consider this matter.

Conclusion

I find that I have no jurisdiction to consider this application.

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: September 2, 2021

Residential Tenancy Branch