



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREATIVE SOCIAL ENTERPRISES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNRT, MNDCT, RR, AS, RP, AAT, LRE, OLC

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- a monetary order for the cost of emergency repairs of \$167.65 and for compensation of \$75.00 for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order allowing the tenant to reduce rent of \$900.00 for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- an order allowing the tenant to assign or sublet the rental unit because the landlord's permission has been unreasonably withheld, pursuant to section 65;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 32;
- an order requiring the landlord to allow access to the unit for the tenant or the tenant's guests, pursuant to section 70;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70; and
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62.

The landlord's agent and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 75 minutes.

Both parties provided their names and spelling. The landlord's agent provided her email address and the tenant's agent provided her mailing address for me to send this decision to both parties after the hearing.

The landlord's agent stated that the landlord named in this application owns the rental unit and she confirmed the rental unit address. She said that she had permission to represent the landlord at this hearing.

The tenant's agent confirmed that she had permission to represent the tenant company ("tenant") named in this application.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Both parties separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. I informed them that I could not provide legal advice to them. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord's agent stated that the landlord did not submit any documentary evidence for this hearing.

This hearing lasted 75 minutes, due to the repeated interruptions, arguments, questions, and comments from the tenant's agent during this hearing. I informed her repeatedly during this hearing, that her evidence and information was very confusing and difficult to follow. The tenant's agent was unsure of what she applied for and frequently changed her testimony throughout this hearing. She was provided with additional time to look up her evidence and information and check her bathroom faucet, during this hearing. She often answered my questions by asking me questions in return.

The landlord's agent said that she found it difficult to respond to the tenant's testimony and claims, since the tenant's agent's testimony was inconsistent and frequently changing throughout this hearing.

Preliminary Issue – Jurisdiction

I raised the issue of jurisdiction at the outset of this hearing, since the tenant filed this application under a company name. I asked both parties to make submissions about jurisdiction at this hearing.

Both parties agreed to the following facts. The tenant's agent occupies one bedroom of two total bedrooms, in a basement suite of a house. No one occupies the second bedroom. There is another separate basement suite in the same house. The tenant's agent is the only person that has occupied the rental unit, primarily for residential purposes, from the beginning of this tenancy, to date. The tenant's agent drafted the written tenancy agreement and addendum, and she included the tenant company name under the section of "tenant."

The tenant did not provide a copy of the written tenancy agreement or addendum for this hearing, so I could not examine their contents.

The tenant's agent stated that she intended to sublet or find roommates to occupy the second bedroom of the basement suite, including international students or employees of her company. She said that this has not yet occurred because the landlord has not agreed to same.

Both parties agreed that I had jurisdiction to hear this matter at this time. The landlord's agent stated that if the tenant intends to find roommates or sublet to employees of the tenant or international students, this would be a commercial tenancy and both parties should obtain relief at Court, not the RTB. The tenant stated that she did not want to go to Court to obtain relief.

Section 4 of the *Act* states the following, in part:

What this Act does not apply to

4 This Act does not apply to

(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,

...

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,...

Residential Tenancy Policy Guideline 19 states the following, in part, at pages 1, 7 and 8:

The Residential Tenancy Act does not apply to living accommodation occupied as vacation or travel accommodation. If a property owner or their agent rents out their unit or property as a vacation or travel accommodation, they have no recourse through the Residential Tenancy Branch for relief under the Act. In the event of a dispute about whether a matter is a residential tenancy or a vacation or travel accommodation, an arbitrator must first determine whether the Branch has jurisdiction over the dispute.

If a tenant is allowing their rental unit or space within their rental unit to be used for a commercial venture, such as a vacation or travel accommodation, a landlord may issue a One Month Notice to End Tenancy (form RTB-33) for a breach of a material term. Variables such as the terms of the tenancy agreement and whether a tenant remains in occupation of the rental unit will be considered on a case-by-case basis by an arbitrator. See section C for more information.

...

Use of rental property for travel/vacation accommodation

Section 4 of the RTA states that the Act does not apply to living accommodations occupied as vacation or travel accommodation and there is no recourse under the RTA for disputes arising from vacation or travel accommodation. However, there have been dispute resolution proceedings arising from tenants who have rented out all or part of their rental unit via AirBnB or other vacation/rental listing services and their landlord has issued a One Month Notice to End Tenancy (form RTB-33) for the tenant's failure to obtain the landlord's written consent to sublet. As stated above within section C, unless the tenant is acting as an agent for the landlord or has moved out of the unit, this is not a true sublet under the RTA. It is unlikely that a One Month Notice to End Tenancy (form RTB-33) for cause for the tenant's failure to obtain the landlord's written consent to sublet would be successful in these circumstances, although this type of action by a tenant may

constitute other breaches of the Act or tenancy agreement for which the landlord might issue a One Month Notice to End Tenancy (form RTB-33).

Tenants and landlords should be aware that there may be municipal bylaws and strata restrictions against use of property for travel or vacation accommodations, as well as insurance ramifications in the event of a problem client who causes damages to the unit. The tenant is responsible for any damages caused by any guest or occupant in the rental unit. A landlord could issue a One Month Notice to End Tenancy (form RTB33) for cause if the rental unit suffered damages as a result of the actions of the tenant or any guest/occupant of the tenant.

As a result, landlords may wish to ensure that additional terms to address this are included in any tenancy agreement in order to maintain control over who occupies the rental unit and for what purposes the rental unit is used. As these are not standard terms of a tenancy agreement under the Act, a prospective tenant and the landlord would have to agree to any additional terms being added to the tenancy agreement. If a tenant were to violate such a term, the landlord could issue a One Month Notice to End Tenancy (form RTB-33) for cause for breach of a material term of the agreement. The

I find that I have jurisdiction to hear this matter, as I find it is a residential tenancy, at this time. I accept both parties' affirmed testimony that the tenant's agent occupies the rental unit alone for residential purposes only, since the beginning of this tenancy, to date.

I find that this is not living accommodation included with premises that are primarily occupied for business purposes and excluded by section 4(d) of the Act, at this time. I also find that this is not living accommodation owned or operated by an educational institution and provided by that institution to its students or employees and excluded by section 4(b) of the Act, at this time. I further find that this is not living accommodation occupied as vacation or travel accommodation and excluded by section 4(e) of the Act, at this time.

I informed both parties that a future determination may have to be made, as to whether the RTB has jurisdiction and the Act applies, if the tenant, occupants, or purpose/use of the rental unit changes during this tenancy, in the future. If the Act does not apply and the RTB does not have jurisdiction in the future, both parties may apply for relief before a Court of competent jurisdiction.

Preliminary Issue – Severing the Tenant's Monetary Applications

The following RTB *Rules* are applicable and state (my emphasis added):

2.3 Related issues

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rule 2.3 of the RTB *Rules of Procedure* allows me to sever issues that are not related to the tenant's main urgent application. The tenant applied for nine different claims in this application and submitted documentary evidence for same.

I informed both parties that the tenant was provided with a priority hearing date, due to the urgent nature of the application to cancel the 10 Day Notice. However, I also dealt with five of the tenant's other claims, including an order to assign or sublet, an order to allow access, an order to comply, an order to restrict the landlord's right to enter, and an order for repairs. After 75 minutes in this hearing, there was insufficient time to deal with the tenant's three remaining monetary claims.

I notified the tenant's agent that the tenant's monetary applications were dismissed with leave to reapply. I notified her that the tenant's monetary claims were non-urgent lower priority issues, and they could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. The tenant's agent confirmed her understanding of same.

I notified the tenant's agent that the tenant could file a new application, if the tenant wants to pursue these three monetary claims in the future. The tenant's agent confirmed her understanding of same.

Preliminary Issue – Assignment or Sublet

Both parties agreed that the tenant did not sign a fixed term tenancy agreement with the landlord, only a month-to-month tenancy agreement.

The tenant's agent stated that she did not want to assign or sublet the rental unit at this time. She said that she did not plan to leave the rental unit at this time. Residential Tenancy Policy Guideline 19 requires the tenant to temporarily or permanently vacate the rental unit, in order to assign or sublet it. Therefore, this portion of the tenant's application is dismissed without leave to reapply.

During this hearing, both parties were informed of the following information. I notified them that they could consult the *Act* and the Residential Tenancy Policy Guidelines, after the hearing.

Section 34 of the *Act* states the following, in part:

Assignment and subletting

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1)...

Residential Tenancy Policy Guideline 19 states the following, in part, at pages 1, 2, 5 and 6 (emphasis in original):

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act (the Legislation) allow a tenant to assign their tenancy agreement and to sublet their rental unit or manufactured home site. In most circumstances, unless the landlord consents in writing, a tenant must not assign or sublet (there are exceptions to this for manufactured home parks). A tenant who assigns their tenancy agreement, or sublets their rental unit, without obtaining the written consent of the landlord, may be served with a One Month Notice to End Tenancy (form RTB-33), pursuant to the Legislation.

...

Under s. 34 of the Residential Tenancy Act, a tenant must not assign a tenancy agreement unless the landlord consents in writing. A landlord must not unreasonably withhold consent if the tenancy agreement has six months or more remaining in the fixed term. (By implication a landlord has the discretion to withhold consent, without regard to reasonableness, in the case of a fixed term tenancy agreement with less than six months remaining). The Act does not specifically refer to month-to-month (periodic) tenancies.

...

In either a fixed-term or a periodic tenancy, failure to obtain the landlord's written consent prior to the assignment could result in the landlord serving a One Month Notice to End Tenancy (form RTB-33).

...

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.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. 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.

Preliminary Issue – 10 Day Notice, Restriction to Enter, and Order to Comply

At the outset of this hearing, the landlord's agent stated that the landlord's 10 Day Notice was cancelled because the tenant paid the rent within 5 days of the notice, so this tenancy was continuing. Accordingly, the tenant's application to cancel the 10 Day Notice is granted, the landlord's 10 Day Notice is cancelled, and this tenancy continues until it is ended in accordance with the *Act*.

The tenant's agent stated that she was no longer pursuing the tenant's application to restrict the landlord's right to enter. She said that the landlord is providing proper 24-hours' written notice, prior to entering the rental unit. The landlord's agent stated that the landlord always provides proper 24 hours' written notice, prior to entering the rental unit. Therefore, this portion of the tenant's application is dismissed without leave to reapply.

The tenant's agent stated that she was not pursuing the tenant's application for an order to comply. She did not identify any sections of the *Act*, the *Regulation*, or the tenancy agreement, that the landlord was required to comply with and failed to do so. Therefore, this portion of the tenant's application is dismissed without leave to reapply.

Preliminary Issue – Repairs

The tenant's agent stated that the electricity issue was repaired by the landlord. She said that the bathroom faucet/tap in the sink was now working and the water was properly running, as she checked it during this hearing. She said that the only remaining repair was for the landlord to install a ventilation system in the kitchen for the portable stove that she uses to cook.

The landlord's agent stated that since the beginning of this tenancy, there was never a ventilation system in the kitchen because there is no stove there. She said that the tenant's agent only uses a hot plate and can open the window for ventilation.

The tenant's agent did not identify which section of the *Act* required the landlord to install a ventilation system in the rental unit. I find that installation of a ventilation system is not a repair issue, pursuant to section 32 of the *Act*.

I further find that the tenant has never had a ventilation system, since the beginning of this tenancy, as the tenant does not have a stove in the rental unit. The tenant's agent chose to move into the rental unit, despite not having a stove or a ventilation system

and did not raise any issue regarding same, to the landlord, at the start of her tenancy or within a reasonable period of time. The tenant's agent drafted the tenancy agreement and addendum herself, and she did not indicate this as an issue or a requirement. The tenant's agent confirmed that she opens the window, in order to obtain ventilation when she uses the hot plate.

The tenant's application for the landlord to complete repairs to the rental unit, is dismissed without leave to reapply.

Preliminary Issue – Allowing Access to Rental Unit for Tenant

The tenant stated the following in the online RTB application details for the claim asking for access to the rental unit for the tenant or the tenant's guests:

“No/restricted access to backyard or any outdoor space of the house as stipulated on the rental agreement. Also, the landlord locked up one room in the suite, and restricted access also to the garage storage.”

During the hearing, the landlord's agent stated that the tenant was not restricted from access to the backyard, outdoor space, or the garage storage. She said that the tenant's agent has the key to access the garage from the kitchen and can use the outdoor space. The tenant's agent did not dispute the above information during this hearing.

The tenant's agent stated that she wanted to sublet the second bedroom at the rental unit, to an employee or an international student. She did not state what personal use she had for the second bedroom but claimed that the tenancy agreement allowed her access to the whole basement suite. She said that she did not intend to move out of the rental unit.

The landlord's agent stated that the tenant's agent only uses one of the two bedrooms at the rental unit. She claimed that the tenant, who drafted the addendum, indicated in that document, that the landlord can rent out the second bedroom to any female. The tenant's agent said that the landlord wanted her to find a female to rent out the second bedroom.

As noted above, the tenant did not provide a copy of the written tenancy agreement or addendum for this hearing. Therefore, I cannot examine these documents to determine what areas of the rental unit and property, that the tenant is entitled to access. Also

noted above, the tenant does not intend to move out or sublet the rental unit at this time, so she does not need access to the second bedroom for this purpose.

I find that the tenant has use of the garage storage, the backyard, and the outdoor space, at the rental property. The tenant's agent did not dispute the testimony of the landlord's agent at this hearing, that she had a key and access to these areas. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's application to cancel the landlord's 10 Day Notice is granted. The landlord's 10 Day Notice is cancelled. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for monetary orders for the cost of emergency repairs of \$167.65, for compensation of \$75.00 for damage or loss under the *Act, Regulation* or tenancy agreement, and an order allowing the tenant to reduce rent of \$900.00 for repairs, services, or facilities agreed upon but not provided, is dismissed with leave to reapply.

The remainder of the tenant's 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 14, 2022

Residential Tenancy Branch