



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by the tenants seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for an order of possession under the Act.

The tenants and the landlord attended the teleconference hearing. The hearing process was explained to the parties and the parties were given an opportunity to ask questions. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had been served with documentary evidence from the other party and had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to an order of possession for the rental unit under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A signed tenancy agreement was submitted in evidence and is signed by both tenants and the landlord, TM. The position of the landlord is that their spouse, PM did not sign the tenancy agreement and feel that the tenancy agreement is not legally binding as a result.

The tenants are seeking an order of possession due to the landlord denying access to the rental unit, changing the rental unit locks and signing another tenancy agreement with new tenants while their tenancy agreement was in effect and valid.

The tenancy agreement was signed by the tenants and landlord TM on April 27, 2022. The landlord writes in their submission that her spouse PM would not sign the tenancy agreement after doing a criminal record search on the male tenant and finding a lengthy criminal record. Before the criminal record search was done and before signing the tenancy agreement, landlord TM accepted \$3,000.00 cash from the tenants and were given the keys to the rental unit.

The landlord advised that once they were advised that their spouse would not sign the tenancy agreement, they immediately went to their bank and retrieved \$3,000.00 from their TD account in the form of a bank draft to the female tenant and provided the bank draft to the female tenant and said that due to their spouse not signing the tenancy agreement the tenancy agreement was null and void, which I will address further below. The landlord admitted that they also changed the locks of the rental unit and re-rented the unit to 2 other tenants from April 30, 2022 to April 30, 2023 for a fixed-term.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, section 54 of the Act applies and states:

Order of possession for the tenant

54(1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

Firstly, I disagree with the landlord submission because once the tenancy agreement was signed, \$3,000.00 was paid to the landlord and the rental unit keys were given to the tenants, I find that this established a tenancy between the parties. The fact that a second landlord did not sign the tenancy agreement is moot and most certainly does not make the tenancy agreement null and void as claimed by the landlord. Given the above, I find the landlord breached the Act when they locked the tenants out of the rental unit.

Once a tenancy has been established a tenancy can only end pursuant to section 44 of the Act. Locking a tenant out of the rental unit because the landlords did not do their due diligence before signing the tenancy agreement is not a reason listed. In addition, sections 10(1) and 10(2) of the *Residential Tenancy Regulation* apply and state:

Locks

10(1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.

(2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.
[emphasis added]

Although I have found the landlord has breached the Act; however, the rental unit has been re-rented. Therefore, I am unable to issue an order of possession under the Act where a formerly tenanted rental unit has been re-rented to a new tenant who is occupying the rental unit.

While I am unable to grant the tenants' application for an order of possession as I find that the evidence before me supports that new tenants occupy the rental unit I do make the following orders pursuant to section 62(3) of the Act:

1. **I ORDER** the landlord to pay the tenants for the \$100.00 filing fee as the tenants would have been granted an order of possession had it not for the landlord unlawfully entering into a new tenancy agreement while the first tenancy agreement was in effect.
2. **I ORDER** the landlord not to breach section 44 of the Act in the future.
3. **I ORDER** the landlord not to breach sections 10(1) and 10(2) of the Regulation in the future.

Given the multiple breaches by the landlord of the Act and regulation, I find the only remedy for the tenants is to seek monetary compensation for what ultimately is locking the original tenants out of the rental unit, denying access to the rental unit for the tenants, and re-renting the rental unit while the original tenancy agreement had not legally ended in accordance with the Act, **all of which are contrary to the Act and unlawful.**

The landlord is reminded that all due diligence, including criminal record checks, must take place **before** a tenancy agreement is signed, a security deposit is paid, and the rental unit keys are provided to the tenants **and not after** as the contract is already legally binding between the parties.

Given the above, I grant the tenants the **\$100.00** filing fee pursuant to sections 67 and 72 of the Act.

Furthermore, given the violations of the Act by the landlord, which I find to be unreasonable, a copy of this decision has been forwarded to an RTB Manager. The RTB Manager will review this decision, and if they are of the opinion that these circumstances could reasonably lead to an investigation and consideration for administrative penalties, then they will send a copy of this decision along with any other relevant materials to the Compliance and Enforcement Unit. This separate unit of the RTB is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances.

After any dispute resolution materials are sent, neither this Arbitrator nor the RTB Manager will play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide this Arbitrator or the RTB Manager with any information they may obtain during their process. Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of this decision, they can also consider additional evidence that was not before this Arbitrator during these proceedings. They are not bound by the findings of fact I have made in this decision. Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

The tenants' application has merit as the landlord has violated the Act and Regulation.

This decision will be emailed to both parties.

The filing fee is granted to the tenants as a result. The monetary order will be emailed to the tenants only for service on the landlord, if necessary. Should the tenants require enforcement of the monetary order, the order must be first served on the landlord with a demand for payment letter and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is cautioned that they can be held liable for all costs related to enforcement of a monetary order.

The tenants are at liberty to apply for monetary compensation if they so choose for the landlord ending the tenancy in a method not provided for under the Act, and for changing the locks and denying entry to the tenants which is contrary to the Act.

An RTB Manager will be advised of this decision for Compliance and Enforcement Unit purposes as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2022

Residential Tenancy Branch