



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, DRI**

Introduction

This hearing dealt with the Applicants application for dispute Resolution (“Application”) pursuant to the *Residential Tenancy Act* (the “Act”) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated March 8, 2022 (“10 Day Notice”) pursuant to section 46;
- an order regarding a disputed rent increase pursuant to section 43;
- an order that the Respondent comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 62.

The Respondent CS, an agent (“NC”) for the owner of the rental unit (“BC”) and the two Applicants (“KN” and “CF”) attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

KN stated the Applicants served the Notice of Dispute Resolution Proceeding and their evidence (“NDRP Package”) on CS in-person on March 20, 2022. CS acknowledged she received the NDRP Package from the Applicants.. I find the NDRP Package was served by the Applicants on CS pursuant to sections 88 and 89 of the Act.

CS stated she did not serve any evidence on the Applicants.

Preliminary Matter –Amendment of Respondent’s Name

At the outset of the hearing, I noted the Application stated the name of the Respondent was NC whereas the 10 Day Notice stated the name of the Respondent was a BC. NC stated the landlord of the rental unit was BC and she and CS were agents of BC. As such, the Applicants incorrectly named NC as the Respondent rather than naming BC as the Respondent. The Applicants refused to make a request that I amend the Application to add BC as a Respondent and remove NC as the Respondent. NC then requested I amend the Application for remove her as the Respondent and add BC as the Respondent.

Residential Tenancy Branch Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

The Applicants could reasonably have anticipated that the representative of BC, the landlord stated on the 10 Day Notice, would make a request that the Application be amended to state remove NC as the Respondent and to add BC as the Respondent. As such, I order the Application be amended to remove NC as the Respondent and add BC as the Respondent. Hereinafter, Respondent refers to BC and not to NC.

Preliminary Matter – Status of Applicants to Make Application

KN stated the original tenant (“CE”) was her mother and that she and KN moved into CE’s rental unit several years ago. KN stated there was an oral agreement with the Respondent that the Applicants were permitted to stay in the rental unit with CE. KN stated CE died prior to March 1, 2022. KN stated her sister has applied to the Court to become the personal representative of CE’s estate. KN did not provide any evidence that either of the two Applicants was the executor or administrator of the estate of CE or had made application to the Court to become the executor or administrator of the CE’s estate.

NC stated that, although permission may have been given for the Applicants to occupy the rental with CE, the tenancy agreement ("Tenancy Agreement") between CE and the Respondent was not amended to add either KN or CF as tenants. NC referred to the Tenancy Agreement submitted into evidence by the Applicants to corroborate her testimony that neither of the Respondents were named as parties to the Tenancy Agreement. NC stated CE paid the rent for February 2022 and that the Applicants have not paid for overholding the rental unit after February 28, 2022. NC stated the Respondent offered the Applicants the opportunity to enter into a new tenancy agreement with the Respondent to take over the rental unit at rent of \$950.00. NC referred to an undated letter submitted into evidence by the Applicants to corroborate her testimony. That letter stated:

Re: Use and Occupancy or New Lease

It has come to our attention that [CE] has passed away and in turned ended our lease agreement with [CE]. While the company at [Name of Respondent] understands this is a difficult situation for the family to deal with, the unit must be cleaned up and vacated by March 1st if no rent is paid by then. Any security deposit returned will go to the executor of the estate [Name of KN's sister] paid for the month of February in full in the amount of \$650.00. This should have given the current residents of [rental address] enough time to move out. We at [Name of Respondent] hope the move out process is smooth and keys returned to our property manager [name of property manager]. If the rent is paid on March 1st for 650.00, the unit will be under Use and Occupant only until March 31st, no further rent will be accepted after March 31, 2022 unless the current residents sign a new lease agreement for the new rent amount of 950.00 per month. The previous amount was grandfathered in the lease with [CE].

Thank you

From [NC] (property Manager)

I find that the personal representative of the estate of CE has not made a claim to take over the rental unit for her own use after the death of CE. As such, I find the Tenancy Agreement was frustrated and came to an end on the date CE died. As such, the Respondent did not need to serve the 10 Day Notice naming CE as the tenant.

Residential Tenancy Branch Policy Guideline 13 (“PG 13”) provides guidance on the rights and responsibilities relating to multiple tenants renting a rental unit under a single tenancy agreement. Part H (“Occupant”) of PG 13 states:

H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.

[emphasis in italics added]

The Applicants have provided no evidence that either of them were added as a tenant to the Tenancy Agreement. NC stated the Tenancy Agreement was not amended with CE to add either of the Applicants to the Tenancy Agreement. As such, neither of the Applicants are a tenant under the Tenancy Agreement and, as occupants only and, as outlined in PG 13 set out above, neither of them has any rights or obligations under the Tenancy Agreement.

KN stated the Applicants have refused to enter into a new tenancy agreement with the Respondent. KN stated they refused to enter into a new tenancy agreement with the Respondent because the Respondent is trying to obtain an illegal rent increase from the Applicants. As such, I find neither of the Applicants have entered into a new tenancy agreement with the Respondent.

Subsection 58(1) of the Act states:

- (58(1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:
- (a) rights, obligations and prohibitions under this Act;
 - (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

As neither of the Applicants is a person, who is a tenant to a tenancy agreement with the Respondent, they do not have any status to bring the Application. As such, I do not have jurisdiction to hear the Application. Based on the foregoing, I dismiss the Application without leave to reapply.

The Respondent may call the Contact Centre of the Residential Tenancy Branch to obtain guidance on how the Respondent may obtain an Order of Possession requiring the Applicants to vacate the rental unit in these circumstances.

Conclusion

I find the Applicants to be occupants in the rental unit with no rights or obligations under the Tenancy Agreement nor a license from the Respondent to continue to occupy the rental unit.

The Application is dismissed in its entirety 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: July 8, 2022

Residential Tenancy Branch