



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicants September 22, 2022 (the “Application”). The Applicants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated September 14, 2022 (the “Notice”)
- For a repair order
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

E.B., N.M. and A.N. appeared at the hearing for the Applicants with M.S., legal counsel. T.L. and S.H. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties, other than M.S., provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Applicants at the outset of the hearing that I would consider the dispute of the Notice and request to recover the filing fee and dismiss the remaining requests because they are not sufficiently related to the dispute of the Notice. The remaining requests are dismissed.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Preliminary Issue – Tenants versus Occupants

An issue arose in relation to whether the Applicants are tenants of the rental unit or occupants. I heard the parties on this issue and made a decision during the hearing so that the Notice could be addressed. These are the reasons for my decision.

Background and Evidence

The rental unit is a house with six bedrooms. The Applicants currently live in the house.

The most recent written tenancy agreement is between the Landlord and J.P. and N.C. as tenants. The agreement started September 01, 2021, and was for a fixed term ending August 31, 2022. Rent was \$4,200.00 per month due on the first day of each month. A \$2,100.00 security deposit and \$2,100.00 pet damage deposit were paid to the Landlord. The agreement has an addendum which states, “the house can accommodate up to six people”.

J.P. and N.C. are not named on the Application and did not appear at the hearing.

The Landlord’s position is that the Applicants are occupants of the rental unit and not tenants of the Landlord. The Agents for the Landlord testified as follows. J.P. and N.C. ended their tenancy by text message, a copy of which is in evidence. The Landlord accepted J.P. and N.C.’s end of tenancy text message as ending their tenancy. J.P. and N.C. moved out of the rental unit August 31, 2022. The Applicants asked to stay in the rental unit and become tenants of the Landlord on August 23, 2022, and the Landlord told the Applicants no to this on August 26, 2022. The Applicants paid the rent amount for September, October and November; however, the Landlord issued receipts for “use and occupancy” only. The Landlord does not want the Applicants as tenants.

The Agents for the Landlord confirmed rent for the entire house was \$4,200.00 as noted in the written tenancy agreement. The Agents testified that the Landlord still holds security and pet damage deposits because J.P. and N.C. have not provided a forwarding address.

The Applicants disputed that they are occupants of the rental unit and submitted that they are tenants of the Landlord. The Applicants testified as follows. In September of 2021, when the written tenancy agreement was signed, the Landlord told those living in the rental unit that the Landlord only wanted two people named on the written tenancy agreement. The Applicants asked the Landlord that all those living in the rental unit be included in the written tenancy agreement; however, the Landlord denied the request. The Applicants relied on page 20 of the Landlord's evidence which are text messages between the parties to support their position about the conversation between them and the Landlord about those named on the written tenancy agreement. When asked about further documentary evidence to support their position, the Applicants could not point to any and said it was a verbal discussion that occurred.

The Applicants submitted that they are tenants of the rental unit and not occupants because they have lived there for a long time, the Landlord asked for their ID when they moved in, the Landlord knows they live there and they have asked the Landlord to do repairs in the rental unit.

The Applicants acknowledged that only N.C. paid rent directly to the Landlord during the term of the written tenancy agreement. The Applicants acknowledged that none of them personally paid the security or pet damage deposits directly to the Landlord.

The Applicants acknowledged J.P. and N.C. moved out of the rental unit in August of 2022. The Applicants testified that they had negotiations with the Landlord about staying on as tenants after J.P. and N.C. decided to move out and acknowledged they did not come to an agreement with the Landlord about this. The Applicants acknowledged they asked to remain as tenants of the rental unit and the Landlord did not respond at first and then said no to this occurring. The Applicants acknowledged the Landlord accepted the rent amount for September, October and November and issued the Applicants receipts for "use and occupancy only".

The only documentary evidence the Applicants relied on to show they personally have a tenancy agreement with the Landlord is a Shelter Information form for E.B. signed by an agent for the Landlord. The Applicants acknowledged they paid rent to others who then paid rent to the Landlord during their time at the rental unit. The Applicants relied on the vacate clause in the written tenancy agreement to support their position.

The Applicants took the position that they were co-tenants of J.P. and N.C. In relation to J.P. and N.C. ending the tenancy, the Applicants submitted that J.P. and N.C. only

did so through text and not through the proper legal route. M.S. submitted that the Applicants have a verbal tenancy agreement with the Landlord based on how long they have lived in the rental unit and because the practice of the Landlord was always to only allow two people to sign the written tenancy agreements.

In reply, the Agents for the Landlord denied that there is a verbal agreement between the parties. The Agents said they cannot recall a conversation where the Landlord said only two people could sign the written tenancy agreement, the Applicants asked that all of them sign the written tenancy agreement and the Landlord denied this request. The Agents for the Landlord sought an Order of Possession for the rental unit.

Analysis and Decision

I told the parties I find the Applicants are occupants of the rental unit and not tenants. These are the reasons for my decision.

RTB Policy Guideline 13 addresses tenants, co-tenants and occupants and states in part:

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.

E. ENDING A TENANCY

A tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. **When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.**

In a monthly or periodic tenancy, when a tenant serves the landlord with a written notice to end tenancy, the effective date of the notice must be at least one month after the landlord receives the notice and on the day before rent is due. **If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice and all tenants must move out, even where the notice has not been signed by all tenants.** When a tenant has ended the tenancy by giving written notice, all co-tenants remain responsible for meeting the terms of the tenancy agreement until the effective date of the notice.

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

If a tenant remains in the rental unit and continues paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.

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.

There was a written tenancy agreement in this matter, and it was only between the Landlord and J.P. and N.C. as tenants. If the parties intended the Applicants to be tenants rather than occupants, I find they would have indicated this on the written tenancy agreement. The written tenancy agreement does not include the Applicants as tenants. The written tenancy agreement contemplates there being occupants in the house because the addendum states the house can accommodate up to six people.

Simply living in the rental unit does not make the Applicants tenants rather than occupants. RTB Policy Guideline 13 is clear that there can be both tenants and occupants living in a rental unit. The tenants are the persons who are contractually obligated to comply with the tenancy agreement and the *Residential Tenancy Act* (the “Act”). Here, it was J.P. and N.C., the individuals named on the written tenancy agreement, who were obligated to comply with the tenancy agreement and *Act*.

I do not accept the submission of M.S. that there can be a written tenancy agreement in place covering the entire rental unit, entire rental amount, entire security deposit and entire pet damage deposit but also be concurrent verbal tenancy agreements between the Applicants and the Landlord. The Agents for the Landlord denied there are verbal tenancy agreements between the Applicants and Landlord. It does not accord with common sense that the Applicants had verbal tenancy agreements with the Landlord and chose not to reduce those to writing when the written tenancy agreement between the Landlord, J.P. and N.C. was completed August 15, 2021. Nor does it accord with common sense that there would be a written tenancy agreement for the entire rental unit, entire rent amount and entire deposit amounts but also concurrent verbal tenancy agreements in which the Applicants were not required to pay rent or deposits.

If M.S. meant to suggest that a term of the written tenancy agreement between the Landlord, J.P. and N.C. is that the Applicants are also tenants of the rental unit, I do not accept this because the Agents for the Landlord denied this, and I find there is no logical reason the written tenancy agreement would not state this.

The Applicants testified that the Landlord required them to only name two individuals on the written tenancy agreement, that they asked to include all individuals and the Landlord denied this request. There are two issues with the Applicants’ submissions on this point. First, it is not supported by the text messages at page 20 of the Landlord’s evidence as claimed. Second, even if this conversation occurred, it is up to the Landlord to decide who to enter a tenancy agreement with and if the Landlord only wanted two tenants, it was within the Landlord’s authority to decide this. The Landlord

was not required to agree to enter a tenancy agreement with all occupants of the rental unit if that is not what the Landlord wished to do.

I do not find it relevant how long some of the Applicants have lived in the rental unit. There is no limit on the number of years occupants can live in a rental unit. Living in a rental unit over time does not change one's legal status from an occupant to a tenant where, as here, the persons do not pay a security or pet damage deposit to the Landlord, do not get named on a written tenancy agreement when one is entered into and do not owe rent or pay rent directly to the Landlord.

I note that the Landlord issued the Notice to J.P. and N.C. alone, another factor which supports that the Landlord had a tenancy agreement with J.P. and N.C. alone.

I do not find it relevant that the Landlord asked for the names and ID of the Applicants. It is completely normal that the Landlord would want to know who is living in the rental unit, whether they are tenants or occupants. The Landlord being aware of who is living in the rental unit does not change the legal status of those individuals.

I do not find it relevant that the Landlord communicated with the Applicants about issues in the rental unit, such as repair issues. There is no prohibition against landlords and occupants of a rental unit communicating and it seems logical that they would if it is easiest for them to do so. Communicating with the Landlord does not change the legal status of the Applicants.

I do not find the vacate clause in the written tenancy agreement relevant. Whether J.P. and N.C. had to vacate the rental unit at the end of the tenancy or not does not have any impact on whether the Applicants are tenants or occupants of the rental unit. If the suggestion is that a vacate clause was not included in the written tenancy agreement because the parties wanted the Applicants to remain in the rental unit after J.P. and N.C. moved out, this should have been reflected in the written tenancy agreement.

I find it significant that there is a written tenancy agreement here which only names J.P. and N.C. as tenants, none of the Applicants paid the security or pet damage deposits and only N.C. paid rent directly to the Landlord. These points support that J.P. and N.C. were tenants of the rental unit and the remaining individuals were occupants.

The Shelter Information form does not change that E.B. is an occupant and not a tenant. The form specifically states on it that it is not a tenancy agreement and

therefore does not change my analysis as it relates to the written tenancy agreement entered into subsequently between the Landlord, J.P. and N.C.

I do not find that the Landlord implicitly created tenancies with the Applicants because once J.P. and N.C. said they were moving out in August of 2022, the Landlord told the Applicants they did not want them to stay and become tenants and only accepted payments for “use and occupancy only” which shows that the payments made after J.P. and N.C. moved out were for occupancy of the rental unit and did not establish a tenancy between the parties.

I do not find it relevant that the parties talked about the Applicants staying in the rental unit because the Applicants acknowledged these were negotiations and there was no final agreement reached.

Further, even if I accepted the Applicants’ position that they were co-tenants of J.P. and N.C., their tenancy ended when J.P. and N.C. ended the tenancy. I acknowledge that J.P. and N.C. ended their tenancy by text message which did not comply with section 52 of the *Act*. However, it is clear from the text message exchange that J.P. and N.C. intended to terminate their tenancy at the end of August 2022. J.P. and N.C. did in fact move out August 31, 2022. I find the Landlord accepted the text message notice, which the Landlord was entitled to do. The Landlord was not required to force J.P. and N.C. to provide a notice that complies with section 52 of the *Act*.

I note that N.C.’s text message to an agent for the Landlord states that the Applicants would be taking over the lease when J.P. and N.C. ended their tenancy. This was not N.C.’s decision to make. As is clear from RTB Policy Guideline 13, it is up to the Landlord to decide whether the Applicants were permitted to stay in the rental unit and continue with a new tenancy, even if they were co-tenants of J.P. and N.C. It is clear from the testimony of both parties that the Landlord did not agree to the Applicants staying in the rental unit and entering into a new tenancy agreement with the Landlord.

I note that some of the Applicants moved in after the written tenancy agreement was entered into between the Landlord, J.P. and N.C. and these reasons apply equally to those individuals because they are not named on the written tenancy agreement, did not pay deposits to the Landlord and did not pay rent directly to the Landlord.

Given the above, I find the Applicants are occupants of the rental unit with no rights or obligations under the tenancy agreement between J.P., N.C. and the Landlord or under

the *Act*. I note that the tenancy between J.P., N.C. and the Landlord ended, and the Applicants have no authority to remain in the rental unit.

The Landlord sought an Order of Possession. I decline to issue the Landlord an Order of Possession. Section 55(1) of the *Act* states:

55 (1) **If a tenant** makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Here, neither J.P. nor N.C. disputed the Notice. The only individuals who disputed the Notice are the Applicants who are occupants of the rental unit and therefore do not have any right to dispute the Notice. Neither J.P. nor N.C. were named on the Application or appeared at the hearing. The Notice was issued to J.P. and N.C. alone. I do not find that I can issue the Landlord an Order of Possession based on the Notice when J.P. and N.C. were not involved in the hearing in any way.

Given the above, the Application is dismissed without leave to re-apply because the Applicants are occupants of the rental unit with no rights under the tenancy agreement between the Landlord, J.P. and N.C. or under the *Act*. This means the Applicants cannot re-apply for any of the requests set out in the Application.

Conclusion

The Application is dismissed without leave to re-apply.

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: November 08, 2022

Residential Tenancy Branch