



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RPP, FFT

Introduction

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

- cancellation of the respondents' Ten Day Notices to End Tenancy for Unpaid Rent or Utilities ("10 Day Notices"), pursuant to section 46;
- an order requiring the respondents to return the applicants' personal property, pursuant to section 65;
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

The two applicants, applicant KD ("applicant") and "applicant JD," and the three respondents, respondent ES ("respondent"), "respondent JV," and "respondent LS," attended this 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 33 minutes from 9:30 a.m. to 10:03 a.m.

All hearing participants confirmed their names and spelling. The applicant and the respondent provided their email addresses for me to send this decision to both parties after the hearing. The applicant and the respondent identified themselves as the primary speakers at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing. Neither party made any adjournment or accommodation requests.

The respondent confirmed receipt of the applicants' application for dispute resolution and notice of hearing. The applicant confirmed receipt of the respondents' evidence. In accordance with sections 88 and 89 of the *Act*, I find that all three respondents were duly served with the applicants' application and notice of hearing, and both applicants were duly served with the respondents' evidence.

The respondent stated that the respondents did not receive the applicants' evidence package. The applicant said that he sent evidence with the application package by registered mail. The respondent stated that the respondents did not receive any evidence, just the application. The applicant did not provide a date of service by email to the respondents, for evidence that the applicants uploaded to the online RTB dispute access site from December 2022 and January 2023. I informed the applicants that I could not consider their evidence because no date of service was provided by the applicants and the respondents did not receive the evidence, contrary to Rules 3.1 and 3.14 of the RTB *Rules*.

Pursuant to section 64(3)(c) of the *Act*, I amend the applicants' application to correct the spelling of respondent JV's and respondent LS's first names. Both parties consented to these amendments during this hearing. I find no prejudice to either party in making these amendments.

Issue to be Decided

Does the RTB have jurisdiction, pursuant to the *Act*, to decide this application?

Background and Evidence

While I have turned my mind to the respondents' documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the jurisdiction claim and my findings are set out below.

The issue of jurisdiction was raised by the applicant, after both parties discussed a partial settlement of this application. The applicant claimed that this was a business

relationship, and the applicants did not owe or pay any rent or utilities to the respondents.

Both parties agreed to the following facts. No written tenancy agreement was signed by both parties. The applicants did not pay any rent, security deposit, or utilities to the respondents. The applicants began living at the residential property, that is the subject of this application, due to a business relationship with the respondents. The respondents asked the applicants to sign a residential tenancy agreement on a standard RTB form, and to pay rent and utilities, after the applicants already lived there, but the applicants refused.

The respondent stated the following facts. The applicants moved into the residential property in December 2021. Since the business folded, the applicants refuse to leave or pay the rent or utilities. The respondents asked the applicants to start paying rent and hydro utilities in June 2022, but the applicants refused. The applicants are now squatting at the residential property.

The applicant stated the following facts. He cannot recall when the applicants moved into the residential property. The respondents asked the applicants to start paying rent and hydro utilities in September 2022. The applicants were running a marijuana grow-operation from the residential property and the business never folded. The respondents asked the applicants to pay for hydro utilities because they said they could not pay for it but the costs were really high and the applicants refused. The respondents ripped the marijuana plants out from the residential property.

Analysis

The following sections of the *Act* state, in part:

Definitions

1 In this Act:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c) a person, other than a tenant occupying the rental unit, who*
 - (i) is entitled to possession of the rental unit, and*
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;*
- (b) a pet damage deposit;*
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];*

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"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 licence to occupy a rental unit;

What this Act does not apply to

4 This Act does not apply to

- (d) living accommodation included with premises that*
 - (i) are primarily occupied for business purposes, and*
 - (ii) are rented under a single agreement,*

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes]...

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following:*
 - (i) the date on which the tenancy starts;*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;*
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;*
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;*
 - (vi) which services and facilities are included in the rent;*
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.*

I find that the RTB does not have jurisdiction to decide the applicants' application, since it is not a residential tenancy matter, pursuant to the Act.

On a balance of probabilities, I find that both parties failed to provide sufficient testimonial or documentary evidence, to show that a tenancy existed, pursuant to a tenancy agreement, between a landlord and a tenant, pursuant to the *Act*.

Both parties provided undisputed, affirmed testimony at this hearing. Both parties agreed that they did not sign a written tenancy agreement, indicating that this was a tenancy, the parties to the tenancy, the address of the rental unit, the amount of rent payable, the amount of security or pet damage deposits payable, the length of the tenancy, which services or facilities were included in rent, or other such relevant information, as required by section 13 of the *Act*.

Both parties agreed that the respondents asked the applicants to sign a written tenancy agreement to pay rent and utilities, but the applicants refused. The respondents provided a copy of a written tenancy agreement on a standard RTB form, beginning on October 1, 2022, which is signed by respondent LS only, on September 30, 2022, but is not signed by any other respondents or the applicants.

Both parties referenced a commercial business relationship in their testimony. The applicants stated that this was a marijuana grow-operation when they began residing at the residential property. The respondents stated that the applicants began residing at the residential property in December 2021, under a business relationship. Both parties agreed that the respondents only asked for the applicants to pay for rent and utilities sometime between June and September 2022, after the applicants were already residing at the residential property since December 2021, without having paid same to the respondents.

The RTB only determines residential tenancy disputes. Section 4(d) of the *Act* excludes living accommodation that are primarily occupied for business purposes under a single agreement.

For the above reasons, I decline to exercise jurisdiction over the applicants' application. I find that the applicants' application is not a residential tenancy dispute, that can be determined by the RTB, pursuant to the *Act*. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

I informed both parties of my decision verbally during this hearing. Both parties affirmed their understanding of same.

Conclusion

I decline to exercise jurisdiction over the applicants' application.

I make no determination on the merits of the applicants' application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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: February 06, 2023

Residential Tenancy Branch