



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPT FFT**

Introduction

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

- an order of possession to the Applicants pursuant to section 54; and
- authorization to recover the filing fee for the Application from the Respondent pursuant to section 72.

The two Applicants (“SY” and “KG”) attended the hearing. The Respondent did not attend the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

SY stated the Applicants served the Notice of Dispute Resolution Proceeding and their evidence (“NDRP Package”) by serving it in person, sending it by registered mail, attaching a copy of it to the Respondent’s door and emailing it to the Respondent on April 9, 2023. SY submitted a signed and witnessed Proof of Service on Form RTB-9 to corroborate her testimony on service of the NDRP Package on the Respondent. Based on the undisputed testimony of SY, I find the NDRP Package was served on the Respondent in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Jurisdiction of Residential Tenancy Branch

SY stated the Applicants lived in the upper floor of the rental unit and paid rent to the Respondent who lived in the lower floor of the rental unit. The Applicants admitted they paid rent to the Respondent. SY stated the Applicants do not know who the owner (“Owner”) of the rental unit was but believe it is owned by the municipality in which the rental unit is located and that the residential property is managed by a management company. SY stated the Applicants share a kitchen. SY stated that, although there is a sliding door at top of the stairs between the kitchen and lower floor of the rental unit, it is not locked. SY stated the Applicants could, if they wanted to, enter the lower floor and the Respondent could, if she wanted to, access the upper floor. SY stated the Respondent changed the lock on the rental unit and left the Applicants personal possessions outside.

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 was added as a tenant to the tenancy agreement between the Owner and the Respondent. The Applicants stated the Respondent shared the kitchen to the rental unit with them. The Applicants stated that the upper and lower parts of the rental unit are separated only by a sliding door that is not locked. As such, neither of the Applicants are a tenant or tenants under a tenancy agreement with the Owner. Based on the undisputed testimony of the Applicants, I find the Applicants are “occupants” only and as outlined in PG 13 set out above, neither of them has any rights or obligations under a tenancy agreement with the Owner.

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 Owner, they do not have any status to make 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.

Conclusion

I find that I do not have jurisdiction to hear the Application.

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: May 6, 2023

Residential Tenancy Branch