



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding NASSAU HOUSE HOLDINGS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, OLC

Introduction

On March 14, 2023, the Applicants applied for a Dispute Resolution proceeding seeking access to the rental unit pursuant to Section 30 of the *Residential Tenancy Act* (the “Act”) and seeking an Order to comply pursuant to Section 62 of the *Act*.

Applicant E.V. attended the hearing, with A.B. attending as an advocate for the Applicants. F.H. and D.L. attended the hearing as agents for the Respondent. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

A.B. advised that she served the Respondent with the Notice of Hearing and evidence package by registered mail, but she was not sure of when this was done. She stated that it was on or around April 12, 2023. F.H. confirmed that the Respondent received only a Notice of Hearing package with no evidence.

A.B. was then given multiple opportunities to provide clarification on service of the Applicants’ evidence. Given that many of the documents submitted were dated May 24, 2023, and were uploaded to the file that same day, it is not likely or logical that this evidence was served with the Notice of Hearing package in April 2023. She was

afforded many additional opportunities to provide some testimony about when and how this evidence was served to the Respondent; however, she was clearly disorganised, and she could only state that it was served by registered mail on days that pre-dated May 24, 2023. Again, it is not likely or logical that this evidence could have been served prior to when it was dated on May 24, 2023. As there was no evidence presented for when this evidence was allegedly served, and as F.H. testified that the Respondent received no additional packages by registered mail, I am satisfied that this evidence was not likely served. As such, I have excluded this evidence and will not consider it when rendering this Decision.

F.H. advised that the Respondent's evidence was served to each Applicant by registered mail on June 26, 2023, to the dispute address (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories of these packages indicated that a notice card was left for these packages to be picked up. A.B. referred to a previous Dispute Resolution hearing where there was an issue with service of evidence. Regardless, given that there is evidence demonstrating that the Respondent's evidence was served in accordance with the *Act*, I am satisfied that this evidence was deemed received five days after it was mailed. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this documentary evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Applicants entitled to access to the rental unit?
- Are the Applicants entitled to an Order to comply?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

F.H. advised that the rental unit was rented to a tenant since October 1, 2000, and she referenced a tenancy agreement submitted as documentary evidence to confirm that this person was the only tenant permitted to rent the unit. She stated that this tenant passed away on February 22, 2023, and cited the death certificate that was submitted as documentary evidence. She then testified that the tenant's niece, who was allegedly the administrator of the tenant's estate, informed the Respondent of this passing on March 8, 2023. She stated that this tenant would be the only person who has ever paid any rent to the Respondent, and that this was always done by money order every month. Moreover, she cited the rent roll and copies of rent payments, submitted as evidence, to substantiate that it was the tenant who paid the rent solely.

She submitted that the Applicants were occupants of the tenant, and the Respondent only knew of this when an inspection of the rental unit was conducted after being informed of the tenant's passing. She testified that the tenant's tenancy agreement was never amended to add the occupants as tenants, that monies were never accepted from these occupants at any point during the tenancy, and that these occupants never signed a new tenancy agreement after the passing of the tenant. As well, she indicated that there was no record of these occupants ever being tenants of this tenancy. She referenced the past Notice of Rent Increase forms provided, and she stated that if these occupants were formalized as tenants at some point, why were their names not included on these forms.

A.B. advised that there was an email from the previous building manager who confirmed that the Applicants were added to the tenancy agreement at some point. However, it is her belief that the tenant's niece came to the rental unit and took all of the tenant's personal property, including any documents that corroborate this position that the Applicants were tenants on the tenancy agreement. It is her belief that the Respondent should have records of the amended tenancy agreement. She referenced a money order submitted as documentary evidence, dated March 30, 2023, that was sent to the Respondent from Applicant E.V. for rent.

E.V. advised that a new tenancy agreement was signed with the Respondent when she moved into the rental unit with the tenant approximately seven years ago. She confirmed that she never paid any monies directly to the Respondent, but always paid the tenant half of the rent. She testified that Applicant E.A. moved in approximately six

months to a year after this, and that this new tenancy agreement was amended to include E.A. as a tenant. She also confirmed that E.A. never paid any monies directly to the Respondent, but paid rent to the tenant. There was no documentary evidence submitted to corroborate any of these submissions.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In my view, after hearing testimony from both parties, I am satisfied that the Applicants have not sufficiently established that there was ever a Landlord/Tenant relationship that was created between them and the Respondent. The documentary evidence I have before me lists the tenant on the tenancy agreement with the Respondent, and there has been no evidence presented that this tenancy agreement was ever amended to add the Applicants on as tenants. Moreover, there has been no new tenancy agreement submitted to corroborate that the Applicants were ever tenants with the Respondent.

Furthermore, the consistent and undisputed evidence is that neither of the Applicants ever paid any rent directly to the Respondent when the tenant was still alive, but paid their rent directly to the tenant throughout the tenancy.

I find it important to note Policy Guideline #19 which states the following:

Disputes between tenants and Respondents regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the Respondent, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the Respondent, if the tenant remains in the rental unit, the definition of Respondent in the *Act* does not support a Respondent/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

Based on my review of the evidence and testimony before me, it is evident that the Applicants were simply occupants of the tenant. While there is evidence that E.V. made a money order out in her name for rent and sent it to the Respondent, this was clearly done after the passing of the tenant. Given that I am satisfied that they were occupants

of the tenant, I do not accept that simply attempting to pay rent to the Respondent would then automatically initiate a Landlord/Tenant relationship between the parties, especially as the Respondent did not accept this rent.

As I am not satisfied that a Landlord/Tenant relationship had ever been created between the Applicants and the Respondent, I have no jurisdiction to render a Decision in this matter. As a note, any dispute under the jurisdiction of the *Act* with respect to this tenancy would be between the estate of the tenant and the Respondent, who was her Landlord.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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 14, 2023

Residential Tenancy Branch