



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The applicant, the respondent and respondent's counsel attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the respondent was served via process server with the applicant's application for dispute resolution on November 5, 2018. I find that the respondent was served with this package in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the applicant entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the applicant entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the applicant entitled to recover the filing fee from the respondent, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the applicant's and respondent's claims and my findings are set out below.

Both parties agreed to the following facts. The applicant advertised the subject rental property for rent. The respondent was looking for a property to rent with her brother in law and nephew. On or about August 28, 2018 the respondent called the applicant to set up a time to view the subject rental property. On or about August 31, 2018 the respondent and her brother in law went to view the subject rental property.

Both parties agreed to the following facts. On or about September 4, 2018 the respondent and her brother in law filled in application forms to rent the subject rental property and provided them via e-mail to the applicant. The applicant then offered the subject rental property to the respondent and her brother in law to rent for October 1, 2018. The respondent and her brother in law accepted and on September 7, 2018 the respondent signed a periodic residential tenancy agreement for the subject rental property at a rate of \$2,800.00 due on the first day of every month. The tenancy agreement listed the respondent, her brother in law and her nephew as tenants. The respondent's brother in law was not available to sign on September 7, 2018 and it was agreed that he would sign the tenancy agreement and pay the \$1,400.00 security deposit on September 14, 2018. The applicant did not sign the tenancy agreement.

The applicant testified that her not signing the tenancy agreement was an oversight on her part. The applicant testified that she believed she had entered into a binding tenancy agreement with the respondent and would do the same with the respondent's brother in law when he signed the tenancy agreement.

The respondent testified that between September 7-14, 2018 she had a disagreement with her brother in law and they decided not to move into the subject rental property together. The respondent testified that when she signed the tenancy agreement she fully intended to rent the subject rental property from the applicant.

The landlord testified that she followed up with the respondent's brother in law on September 14, 2018 and he informed her that he would not sign the tenancy agreement and that he and the respondent would not be taking possession of the subject rental

property. The respondent's brother in law provided the landlord with a signed letter dated September 14, 2018 which states:

I [respondent's brother in law] and [the respondent], are giving notice to end tenancy at [the subject rental property].

The aforementioned letter was entered into evidence.

The applicant testified that she put up new advertisements for the subject rental property on September 14, 2018 in an effort to re-rent the subject rental property for October 1, 2018. The applicant testified that she was not successful in finding a new tenant until November 1, 2018. The applicant is seeking the following damages from the respondent:

Item	Amount
October 2018's rent	\$2,800.00
Process server fees	\$237.00
Filing fee	\$100.00
Total	\$3,137.00

Counsel for the tenant made the following submissions. The *Residential Tenancy Regulation* sets out certain requirements for a valid residential tenancy agreement. In particular, Section 12 of Part 2 of the Regulation states that a landlord must ensure that a tenancy agreement is signed and dated by both the landlord and the tenant. In this case, the Agreement was signed on by the respondent and was not signed by the other two named tenants, or by the applicant as landlord. Accordingly, the tenancy agreement did not comply with the statutory requirements for a valid written tenancy agreement and is therefore of no force or effect.

Counsel for the tenant cited a Residential Tenancy Decision in which the Arbitrator found that the failure of the landlord to sign the tenancy agreement that the tenant signed resulted in the tenancy agreement being found to be void and of no force or effect.

Counsel for the tenant cited the BC Supreme Court Decision of *Darbyshire v. Residential Tenancy Branch (Director)*, 2013 BCSC 1277, wherein the Supreme Court of British Columbia discussed the importance of strict compliance with section 13 of Part 2 of the Regulation (which set out certain requirements for tenancy agreements, including that such agreements be prepared by the landlord in writing and include essential terms such as the correct legal names of the parties). In paragraph 11 of that

decision, Justice Funt provided the following commentary relating to Section 13 of the Regulation:

“In my view, the foregoing provisions show the importance which our legislature (certainly since 2003) places on written residential tenancy agreements. One of the legislature’s clear purposes was to avoid confusion by requiring matters to be put in writing. For example, section 13(2)(b), which requires the correct names of the landlord and tenant, will help to avoid confusion where there is to be, say, two occupants of the residential premises. The written tenancy agreement will serve to make it clear whether both occupants are tenants and thus financially liable, or only one of them.”

Respondent’s counsel submitted that the reasoning applied by Justice Funt in his consideration of section 13 of the Regulation should also be applied to consideration of section 12 of the Regulation, which requires that the landlord *“must ensure that the tenancy agreement is signed and dated by both the landlord and the tenant.”*

Respondent’s counsel submitted that the failure by the applicant to ensure that the tenancy agreement was signed and dated by the applicant as landlord and by the other tenants provides a complete rebuttal to the applicant’s claims.

Respondent’s counsel submitted that since the security deposit was not paid, there was no consideration provided by the respondent to the applicant and that consideration is an essential element for the formation of a binding agreement.

Respondent’s counsel submitted that the applicant was aware that a binding tenancy arrangement was contingent upon the respondent’s brother in law executing the tenancy agreement and providing a deposit.

Respondent’s counsel submitted that since vacant possession was never delivered by the applicant to the respondent or the other tenants listed on the tenancy agreement, the common law principles regarding tenancy in occupation or other unwritten landlord and tenant arrangements are not applicable to this matter.

Analysis

Section 1 of the *Act* states that a 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.

Based on the submissions of both parties, I find that the tenant and her brother in law filled out applications to rent the subject rental property. I accept that as a practice the landlord required potential tenants to file an application to rent and if accepted the landlord would then prepare a tenancy agreement. While the landlord did not sign the tenancy agreement I find the fact that the landlord prepared a tenancy agreement and the fact that the respondent signed provides sufficient evidence that the applicant accepted the respondent as her tenant and that by signing the tenancy agreement the respondent accepted the terms of that offer from the landlord. In addition, based on the testimony of both parties, I find that both the applicant and respondent intended to enter into a binding residential tenancy agreement on September 7, 2018. As such, I find that a tenancy existed. Going forward in this decision, I will refer to the parties as tenant and landlord.

I find that the fact that the other persons listed as tenants on the tenancy agreement did not sign it, does not lessen the tenant's responsibility for signing the tenancy agreement. I do not accept tenant's counsel's submission that all persons listed as tenants were required to sign the tenancy agreement to make it binding on the tenant who signed.

Upon review of the Residential Tenancy Branch Decision cited by tenant's counsel, I note that the Arbitrator found that while the fixed term tenancy agreement was void, a periodic oral tenancy was in place. The fact that the landlord did not sign the tenancy agreement did not mean that a tenancy was not formed. I also note that I am not bound by previous Residential Tenancy Branch Decisions.

Tenant's counsel submitted that I should interpret section 12 of the *Regulations* as requiring strict compliance. Section 12 of the *Regulations* states that a landlord must ensure that a tenancy agreement is

- (a) in writing,
- (b) signed and dated by both the landlord and the tenant,
- (c) in type no smaller than 8 point, and
- (d) written so as to be easily read and understood by a reasonable person.

However, as stated above, a tenancy agreement is defined as written or oral, express or implied. I find that given the wide breadth given to the definition of a tenancy agreement it is inappropriate to demand strict compliance with section 12 of the *Regulation*.

Counsel for the tenant submitted that the fact that the tenant did not pay the landlord a security deposit and the fact that vacant possession of the subject rental property was never provided to the landlord evidences the lack of a crystalized tenancy agreement.

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. I find that the lack of a security deposit paid to the landlord does not diminish the tenant's responsibilities as per section 16 of the *Act*.

I also do not accept tenant's counsel's submissions that a binding tenancy arrangement was contingent upon the respondent's brother in law executing the Agreement and providing a deposit. I find that the tenant was bound to fulfill her obligations as a tenant under the *Act* from the moment she signed the tenancy agreement, pursuant to section 16 of the *Act*.

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, the earliest date the tenancy could have ended under section 45(1) of the *Act* was October 31, 2018.

Residential Tenancy Policy Guideline #5 states that where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date.

I find that the tenant gave notice to end the tenancy for a time that is earlier than that permitted by the Legislation and is therefore responsible for October 2018's rent in the amount of \$2,800.00.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I dismiss the landlord's claim for the cost of the process server.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$2,900.00

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 27, 2019

Residential Tenancy Branch