



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPT and MNDC

Introduction

This application was brought by the tenant seeking an Order of Possession and monetary compensation of \$5,000 after the landlord locked her out of the rental unit.

This matter was originally set for hearing on March 10, 2009, but was adjourned at the request of the landlord due to injuries suffered when he was struck by a car the previous day. As requested, the landlord subsequently provided a note from his doctor verifying the injuries.

As the hearing reconvened, the parties gave evidence that the applicant had moved in to the rental unit, an undivided house, in mid-November of 2008 and was forced to leave in early January.

The primary tenant gave evidence, confirmed by the owner, that he was the caretaker/property manager of the house and the applicant had been his friend.

He stated that the applicant had moved in to the house as a guest, had not paid a security deposit, had never paid rent, and was, therefore, not a tenant.

The owner gave evidence that he had considered creating a tenancy with the applicant to the point of filing an “Intent to Rent” form with the Ministry Responsible for Income Assistance on Friday, January 2, 2009 but withdrew the document on Monday, January 5, 2009 before it was processed.

I had initially considered that this matter was outside of the jurisdiction of the *Residential Tenancy Act* on the grounds that the property manager and the tenant shared the washroom and kitchen. However, on review, I find that section 4(c) of the *Act* removes jurisdiction where the “owner,” (not property manager or caretaker) shares kitchen and washroom with the tenant.

Therefore, I am bound to reconsider whether a tenancy exists.

On the basis of the property manager’s testimony that the applicant was a guest, had paid no security deposit, had never paid rent, had no written agreement, and was moved in without the knowledge of the owner, I find that this occupancy did not constitute a tenancy.

Therefore, the application is dismissed for lack of jurisdiction.

March 25, 2009,

Dispute Resolution Officer