



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes FF, O

Introduction

Some documentary evidence and written arguments have been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an Order of Possession based on a Mutual Agreement to End Tenancy, the applicant is also requesting an order that the respondent bear the \$50.00 cost of the filing fee.

Background and Evidence

The applicant testified that:

- The tenants signed a Mutual Agreement to End the Tenancy, ending the tenancy at 5 p.m. on January the 31st 2011.
- The tenant is now saying that she will not vacate the rental unit.

The applicant is therefore requesting an Order of Possession based on the mutual agreement.

The respondent testified that:

- This property does not fall under the Residential Tenancy Act, because it is rented primarily for business purposes in which to run a recovery house.
- Therefore since it does not fall under the Residential Tenancy Act, the Residential Tenancy Branch has no jurisdiction in this matter.

In response to the respondent's testimony the applicant stated:

- This property was rented primarily as a residential tenancy, and not for business purposes.

Analysis

The respondent claims that this property was rented primarily for business purposes; however she has supplied no evidence in support of that claim.

The Mutual Agreement to End Tenancy signed by the respondent, is on a Residential Tenancy Branch form, and even states, in part, **“it is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act”**.

The tenant may be running a business out of this property, however running a business out of a property that was rented primarily as a residential tenancy, under the Residential Tenancy Act, does not turn the tenancy into a commercial tenancy and excluded it from the Act.

Therefore since the tenant has signed a mutual agreement to end this tenancy under the Residential Tenancy Act, I find, on the balance of probabilities, that this is a residential tenancy, and that this tenancy does fall under the jurisdiction of the Residential Tenancy Branch.

I therefore accept jurisdiction over this matter, and since the parties have signed a mutual agreement to end this tenancy I will issue an Order of Possession in favour of the landlord.

Conclusion

I have issued an Order of Possession for 5 p.m. on January 31, 2011 and have ordered that the respondent bear the \$50.00 cost of the filing fee.

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: January 20, 2011.

Residential Tenancy Branch