



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: OPR

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated February 17, 2011.

The applicant and the respondent both appeared.

Issue(s) to be Decided

The applicant was seeking an Order of Possession and the issue to be determined is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent.

Preliminary Matter

At the outset of the hearing the applicant, who is the owner of the property, and the respondent both testified that there was no tenancy agreement and there never had been a landlord-tenant relationship of any kind. The owner testified that a discussion had initially occurred between the owner and the current occupant of the rental unit regarding the possibility of her renting the unit in future, but no tenancy was agreed upon. The owner testified that the respondent had merely moved in without permission on December 6, 2010 and without the parties creating any bona fide tenancy.

According to the applicant, since the premises have been occupied by this individual, attempts made by the landlord to vacate the house have not been successful.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) of the Act. *This section provides that* a person may apply for dispute resolution in respect of the rights, obligations and prohibitions under the Act or terms of a tenancy agreement that: (i) are required or prohibited under the Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

The Act defines “*tenancy*” as a tenant's right to possession of a rental unit under a tenancy agreement . Under the Act “*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. The Act defines “*rental unit*” as living accommodation rented or intended to be rented to a tenant and defines “*landlord*”, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord:

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

In this instance, I find that the contract between the applicant and respondent, if any, does not meet the requisite criteria to be considered that of landlord and tenant.

Given the above, I find there exists no genuine tenancy agreement between these two parties. Although the respondent had apparently moved in to occupy the premises in question, I find that this occupant is not a tenant and the applicant is not her landlord. Therefore the occupant has no tenancy rights under the Residential Tenancy Act and the owner has no responsibilities under the Residential Tenancy Act.

Having found that no tenancy exists as defined by the Act, the relationship and matters under dispute do not fall under the authority of the Residential Tenancy Act. Therefore the application cannot proceed and must be dismissed.

I hereby dismiss the application without leave to reapply. The applicant is at liberty to seek remedy in another legal forum.

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: March 2011.

Residential Tenancy Branch