



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent and money owed or compensation for damage or loss and recovery of the filing fee.

The tenant did not appear at the hearing. The landlord gave affirmed testimony that she served the Hearing Package upon the tenant via registered mail on July 23, 2011, to the tenant's residential address, which is the dispute address. The landlord did not provide a copy of the registered mail receipt, but did provide testimony of a tracking number.

Having been satisfied the landlord served the tenant in a manner that complies with section 89 of the Residential Tenancy Act (the "Act"), I determined that the hearing would continue.

On a procedural note, there was no tenancy agreement entered into evidence and after brief initial testimony regarding the lack of a tenancy agreement, I determined that there was a possibility the Act did not apply to this dispute.

I proceeded to hear from the landlord to make a determination of jurisdiction and in the event I found jurisdiction, to make a Decision.

Issue(s) to be Decided

1. Does the *Residential Tenancy Act* apply to this dispute and do I have jurisdiction to resolve this dispute?
2. Has the tenant breached the Act or tenancy agreement, entitling the landlord to an Order of Possession and monetary relief?

Background and Evidence

The landlord supplied a 10 Day Notice for Unpaid Rent (the "Notice") into evidence and testified that the Notice was delivered on July 12, 2011, via a posting on the door and in person. The amount listed on the Notice is \$5,800.00 for unpaid rent and \$348.57 for unpaid utilities.

The landlord also submitted two pages of notebook paper depicting a tenant ledger sheet.

Upon query as to when the tenancy started, the landlord stated that there is no tenancy agreement as the tenant will not “sit down” to discuss the issue.

The landlord testified that there was no original agreement to rent the premises, but rather the tenant and other parties, perhaps a brother, showed up to fix the rental unit and, although the brother has since vacated the premises, the tenant has never left.

The landlord testified that she has asked the tenant to leave and he replied that it was his house and he wasn't leaving. However, despite this, the tenant, according to the landlord, will not pay rent, even though the landlord believes he owes \$1,000.00 per month.

The landlord stated that she has to pay the water bill attached to the property as well as all the taxes and maintenance, but has to depend on payments from her son to sustain herself due to lack of rent payments.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In order for the applicant/landlord to succeed in this application, the applicant/landlord must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord and tenant relationship.

The three basic tenets used to determine if a contract has been entered into include: capacity, consensus and consideration. In this case there was no evidence or testimony presented questioning the other party's capacity; as such I make no findings on capacity.

I find the evidence and testimony submitted by the applicant/landlord fails to prove that there was financial consideration. As such I make no findings on financial consideration.

In relation to the matter of consensus, if the consensus is found in written form it is evident; however, in the case of verbal agreements when the parties, after the fact, disagree with what was agreed-upon, it is virtually impossible for a third party to interpret whether consensus was reached.

When the evidence required to establish the existence of a tenancy consists of unclear testimony and evidence, then it is virtually impossible for a third party to establish facts and the claim fails.

Residential Tenancy Policy Guideline 27 states that Residential Tenancy Branch does not have the authority to hear all disputes regarding every type of relationship between two or more parties. The jurisdiction conferred by the Legislation is over landlords, tenants and strata corporations.

I cannot find on a balance of probabilities that the applicant/landlord and respondent/tenant had entered into a landlord-tenant relationship. The nature of the dispute appears to be more of a contract for services from which the landlord cannot extricate herself and therefore, not within the jurisdiction of the Residential Tenancy Act.

I therefore decline to find jurisdiction to resolve this dispute.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

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: August 24, 2011.

Residential Tenancy Branch