

DECISION

Dispute Codes MT, OPT, AA

Introduction

This is an application filed by the Tenant to allow more time to make an application to cancel a notice to end tenancy, to obtain an order of possession of the rental unit or site, allow access to (or from) the unit or site for the Tenant or the Tenant's guests.

Both parties attended the hearing by conference call and gave testimony. The Landlord has not submitted any evidence.

At the beginning of the hearing it was clarified that the Tenant filed an amended application cancelling the request to allow for more time. The Landlord also brought forward an argument that Section 4 of the Residential Tenancy Act applies in this case. The Landlord relies on Section 4 which states,

What this Act does not apply to

4 This Act does not apply to

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,

The Landlord states that there is a bar and restaurant on the main floor, but that the living accommodations are separate. The Landlord also states that the hostel is a vacation or travel accommodation. The Tenant has provided a rental agreement in evidence. Based upon the direct testimony of the Landlord, I find that Section 4 does not apply and that the Residential Tenancy Branch has jurisdiction.

Issue(s) to be Decided

Is the Tenant entitled to an order of possession?

Is the Tenant entitled to an order to allow access to the unit?

Background and Evidence

The Tenant stated in her direct testimony that she is currently living in the rental unit and that the Landlord is accepting her rent payments. The Landlord does not dispute the Tenant's claims. The Tenant stated that she has free access to the unit.

The Tenant has not received a formal notice to end tenancy. The Landlord confirms this stating that his letter dated August 12, 2011 as an "Eviction Notice" was sufficient for his understanding that the Residential Tenancy Act did not apply. Both parties agree that the Landlord is still accepting rent from the Tenant up to the date of this hearing.

Analysis

Based upon the Tenant's direct testimony, I find that an order of possession is not required as she currently has possession and free access to the unit. I find that the Tenant was not properly served with a notice to end tenancy under the Act. The Tenant's application for an order of possession and to allow access to the unit is dismissed. The Tenancy continues.

Conclusion

The Tenant's application is dismissed.

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: December 07, 2011.

Residential Tenancy Branch