



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MND

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Respondent acknowledged receipt of the hearing documents and evidence submitted by the Applicant. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Do these parties have a Landlord and Tenant relationship?

Background and Evidence

The parties agreed that the Respondent has occupied the suite since December 2010 and that they have had a long standing friendship.

The Applicant asserted that notwithstanding their friendship, they entered into a verbal tenancy agreement and that the Respondent agreed to pay him \$800.00 per month to occupy the unit and to cover the cost of electricity the occupant was using. He stated the Respondent paid him a security deposit of \$300.00 in December 2010.

The Applicant argued that the Respondent has been paying him the \$800.00 each month until December 2011 and he has not made payments since. He confirmed that he did not serve the Respondent with a copy of the 10 Day Notice prior to making this application; rather he gave the Respondent a typed written notice.

The Respondent refutes the Applicant's testimony and argued that this is not a Landlord – Tenant relationship. He asserts this is a business relationship and that he was paying the Applicant to cover the costs of an audit he hired him to complete and to cover the cost of utilities being used.

Analysis

When a party makes an application for an Order of Possession and a Monetary Order the onus lies with the Applicant to meet the burden of proof.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Applicant has the burden to prove a Landlord – Tenant relationship exists. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Applicant's burden of proof.

The Applicant is at liberty to serve the Respondent with a new 10 Day Notice, in accordance with the Act, and make another application supported by documentary evidence to prove the existence of a *Residential Tenancy*.

Conclusion

I HEREBY DISMISS this application.

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: June 15, 2012.

Residential Tenancy Branch