



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This matter dealt with an application by the Landlords to enforce a Mutual Agreement to End Tenancy dated December 28, 2011.

Issue(s) to be Decided

1. Is there a tenancy and if so, does the Landlord have grounds to end it?

Background and Evidence

The Applicant, L.W., is the manager of the housing cooperative which is a non-profit cooperative. L.W. claimed that the Respondent is not a member of the co-operative. L.W. said the Respondent began residing with him as a guest in August 2011 but he later discovered that the Respondent was illegally collecting rent from welfare authorities at another location. At the same time, L.W. said the Respondent started becoming aggressive and confrontational with him. Consequently, L.W. said he told L.W. that he could live in another unit run by the cooperative for a month but would have to pay rent.

The Parties agree that on or about December 28, 2011, the Respondent signed a welfare form called an "Intent to Rent" from the cooperative as well as a Mutual Agreement to End the Tenancy effective January 31, 2012. The Parties also agree that in January 2012, welfare paid to the Applicants rent of \$375.00 and a security deposit of \$175.00 on behalf of the Respondent. The Applicant, L.W., said the Respondent advised him at the end of January 2012 that he needed more time to find another residence and he agreed that the Respondent could stay as a guest for a further 5 months. The Respondent said he wanted to continue his tenancy after January 2012 but the Applicant, L.W., called welfare and told them that the tenancy had ended so no further rent was paid on his behalf. In any event, the Respondent agreed that he has resided in the property since the beginning of February 2012 as a guest.

The Applicant, L.W., said the Respondent has refused his requests to leave the rental property and has become disruptive. The Respondent said he does odd jobs for the Applicants and L.W. wants him to leave because he challenges his management style.

Analysis

Section 2 of the Act says the “Act applies to tenancy agreements, rental units and other residential property.” RTB Policy Guideline #9 says that a licence to occupy is a living arrangement that is not a tenancy and therefore it is not covered by the Act. Under a licence to occupy, a person is given permission to use property but that permission may be revoked at any time. On the other hand, if there is exclusive possession of a rental unit for a term and rent is paid, there is a presumption of a tenancy. The Guideline explains some of the other factors that may be relevant when determining if a living arrangement is a tenancy or a licence to occupy.

I find that the Parties established a tenancy for the month of January 2012 only when the Respondent paid rent and a security deposit. However, I find that the tenancy ended on January 31, 2012 pursuant to a Mutual Agreement to End Tenancy executed by the Parties on December 28, 2011. After January 31, 2012, I find that the Parties agreed that the Respondent would reside in the rental property as a guest until he could find a new residence but for no longer than 5 months. I further find that the Respondent has not paid rent or entered into a new tenancy agreement with the Applicants since January 31, 2012. Consequently, I find that the Respondent’s living arrangement is a licence to occupy and accordingly, this matter is not one that falls under the jurisdiction of the Residential Tenancy Branch.

Conclusion

The Applicants’ application is dismissed without leave to reapply due to a lack of 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: July 10, 2012.

Residential Tenancy Branch