



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC. and VISION QUEST SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee.

The landlord served the notice of hearing on the tenant on June 18, 2013 by registered mail and provided a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Does this matter fall within the jurisdiction of the *Residential Tenancy Act*? If so, does the landlord have grounds to end this tenancy? Is the landlord entitled to a monetary order to recover unpaid rent and the filing fee?

Background and Evidence

The tenancy started in July 2009. There is no written tenancy agreement that is signed by both parties. The rental unit consists of a three level home. The upper two floors make up one suite and there are two more suites in the basement. The tenant initially rented the upper two levels and on or about January 2010 rented the two basements suites as well. The total rent is \$3,500.00 due on the first of each month.

The tenant is a society that is engaged in the business of providing supportive recovery services. In his written submission, the tenant states that due to the nature of the services the society provides, the society is exempt from the provisions of the *Act* and accordingly this matter does not fall under the jurisdiction of the *Residential Tenancy Act*.

Both parties filed correspondence between themselves regarding the sale and purchase of the dispute unit. It is apparent that the tenant has intentions of purchasing the unit and the landlord is also in the market for a sale of the unit. An offer has already been made by the tenant and the landlord is currently awaiting a response to his counter offer. References have been made to some alleged unethical transactions by the landlord's agent around the same time that the tenant stopped paying rent.

The landlord filed proof of having received rent from the tenant until the tenant stopped rent payments in March 2013. The landlord served the tenant with ten day notices to end tenancy on April 02, 2013 and May 02, 2013. The tenant did not dispute the notices and also did not pay the outstanding rent. The tenant continues to occupy the rental unit and as of the date of the hearing owes the landlord a total of \$17,500.00 in unpaid rent.

The landlord is applying for a monetary order for this amount plus \$100.00 for the recovery of the filing fee. The landlord has also applied for an order of possession effective two days after service on the tenant.

Analysis

Section 4 of the *Residential Tenancy Act* sets out exclusions from the *Act*. The tenant took the position that 4(d), 4(g) and 4(f) of the exclusions applied to this arrangement and are as follows:

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,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
 - (i) in a care facility under the *Community Care and Assisted Living Act*,
 - (ii) in a continuing care facility under the *Continuing Care Act*,
 - (iii) in a public or private hospital under the *Hospital Act*,
 - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
 - (v) in a housing based health facility that provides hospitality support services and personal health care, or
 - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,

In this case, I find that the rental unit is primarily occupied for business purposes. The society is in the business of providing recovery services and uses the rental unit for this purpose.

Therefore, I find that section 4 (d) applies to this rental arrangement and accordingly, the *Act* does not apply. Since I find that the *Act* does not apply, I decline to proceed due to a lack of jurisdiction.

Conclusion

The landlord'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: July 18, 2013

Amended: July 30, 2013

Residential Tenancy Branch

