



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MND, RPP, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

1. A Monetary Order for compensation or loss - Section 67; and
2. An Order for the return of personal property – Section 65.

The Landlord applied for:

1. A Monetary Order for damages to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is there any authority under the Act to consider the claims contained in either application?

Background and Evidence

The second named Tenant started its tenancy on June 1, 2013. This Tenant passed away at the end of April 2014. Two months prior to the Tenant's death, the first named Tenant and the Witness, the daughter of the second named Tenant, moved into the unit to care for the Tenant. The Parties agree that the first named Tenant and the Witness were only occupants of the unit. The second named Tenant did not leave a will naming an executor and no administrator has been appointed. The first named Tenant states that there is no estate other than the possessions left in the rental unit and claims the return of the property left in the unit.

The Landlord states that he only named the persons on his application as Tenants because those were the persons named in the Tenant's application. The Landlord claims damages to the unit.

Analysis

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. A tenant is defined as including the estate of the deceased tenant. As the first named Tenant in the Landlord's application is not a tenant, the Landlord has no right to claim against this person and I dismiss the application against this person. As the second named Tenant is deceased and as the Landlord has not served the application to the deceased Tenant's estate representative, I dismiss the application with leave to reapply against the deceased Tenant's estate.

As the first named Tenant in the Tenant's application is not a tenant, this person has no right to claim against the Landlord. As this person is also not the representative of the second named Tenant's estate, I find that this person also has no right to claim against the Landlord on behalf of the second named Tenant. This application in relation to the first named Tenant must therefore also be dismissed. The estate of the second named Tenant has leave to reapply.

Conclusion

Both applications are dismissed with leave to reapply as set out above.

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: November 05, 2014

Residential Tenancy Branch

