Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Garrison Crossing Dev. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Codes: OPT

Introduction:

This was an application by the tenant for an Order for Possession. Only the applicant attended the application.

Issues:

Is the applicant entitled to an Order for Possession?

Background and Evidence:

The applicant TS testified that she sent the dispute resolution package by registered mail to the business address of the respondent on January 15, 2015. The applicant testified that she met with the respondent's agent YC on December 12, 2014 in response to an advertisement to rent the unit in question. At the meeting the rent was agreed to and YC advised TS that she would have to complete a criminal record check. TS testified that same day she had a criminal record check conducted. After that meeting she telephoned YC and advised that she wished to rent the unit. TS testified on December 15, 2014 she gave the respondent $ 200.00 and was issued a receipt that acknowledged it was for a "security deposit."   On January 4, 2015 TS received an email from YC advising her that the unit was rented to another individual. TS testified that on January 5, 2015 she attended the office of the respondent with a copy of her criminal record check but was again advised the unit was rented to another. The respondent returned to the applicant her $ 200.00 and issued a receipt which said "security deposit & partial for 311 Campus." The applicant is requesting an Order for possession for that unit.

Analysis:

I find that the respondent is deemed to have been served 5 days after the applicant sent the package by registered mail or on January 20, 2015.

Section 16 of the Residential Tenancy Act indicates that a tenancy agreement begins when a tenancy agreement is entered into whether or not the tenant actual takes possession of the unit.
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Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 17 of the Act state that; requiring the tenant to pay a security deposit may be a condition evidencing the commencement of a tenancy agreement.

Landlord may require security deposit

17 A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

In this situation it may very well be the case that a tenancy agreement began on December 15, 2014 when the respondent accepted the $ 200.00 as security deposit from the applicant. However section 54 of the Act does not give me the authority to grant an Order of possession to a tenant where that unit is no longer vacant and available.

Order of possession for the tenant

54 (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

I therefore find that I must dismiss this application. The applicant may have other remedies under the Residential Tenancy Act or before other forums.

Conclusion:

I have dismissed the application herein. I have not made any Order as to the recovery of the filing fee.

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: February 02, 2015

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Residential Tenancy Branch