



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, MT, OPR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlords application is a request for an Order of Possession based on a Notice to End Tenancy that was given for nonpayment of rent. The Landlords are also requesting recovery of their filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, a request for more time to file an application, and a request for recovery of her filing fee.

Some documentary evidence, written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The first issue I dealt with was a challenge to the jurisdiction of the Residential Tenancy Act over this matter, brought by the tenant who claims this is not a residential tenancy.

Background and Evidence

The tenant testified that:

- She does not believe that a residential tenancy exists, as she has never signed the tenancy agreement, never paid a security deposit, and has never paid any rent.
- She is still legally married to one of the co-landlords, and he told her she could live in the rental unit, rent free, until she gets back on her feet.
- She realizes that the landlords want her to move out of the rental unit, and she is willing to do so on July 1, 2014, however she is not willing to move at this time.
- She believes this is a family dispute and therefore is not covered under the Residential Tenancy Act.

The landlords testified that:

- There was never any agreement to allow the tenant to move into the rental unit and live there rent free.
- The tenant is still legally married to the male landlord, however they have been separated for a number of years now.
- When the tenant moved into the rental unit she paid a \$300.00 security deposit and \$700.00 in rent for a total of \$1000.00.
- The tenant moved into the rental unit in January of 2012 and that is when the \$1000.00 payment was made.
- The tenant has paid no money at all since January of 2012, however they did not pursue rental payments because the tenant had agreed that she would pay the rent owed when she received an inheritance from her mother.
- However since the tenant has still not paid any rent and they can no longer afford for her to be living in the rental unit without paying her rent, they have served the Notice to End Tenancy, and are requesting an Order of Possession.

In response to the landlord's testimony the tenant testified that:

- She adamantly denies ever paying any money whatsoever for either a security deposit, or rent.
- Nothing was paid when she moved in, and nothing was requested as the male landlord had told her she could live here until she got on her feet.

Analysis

It is my finding that the landlords have not met the burden of proving that a residential tenancy exists in this situation.

The landlords have testified that the tenant paid a security deposit and one month rent when she moved into the rental unit, however they have provided no evidence in support of that claim.

Further, although the landlords claim that the tenant agreed to pay rent, the tenant denies this claim as well, and in the absence of any written tenancy agreement, it is my finding that the landlords have not met the burden of proving that a residential tenancy exists.

Therefore since the landlords have not met the burden of proving that a residential tenancy exists, it's my finding that the Residential Tenancy Act has no jurisdiction over this dispute.

Conclusion

I declined jurisdiction over this matter.

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: March 30, 2015

Residential Tenancy Branch

