



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution with the applicant seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the applicant's agent.

The applicant's agent testified each respondent was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 8, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The agent also testified that the package for the respondent AK was returned as she is no longer living in the rental unit. The agent submitted that the respondent AK is in a care facility and her affairs are managed by the Public Guardian and Trustee so the hearing package was mailed to their office. He states he has been in communication with them and they did not intend to attend the hearing.

Based on the testimony of the applicant, I find that each respondent has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing I had the landlord's agent explain the relationship between the parties. I had noted the tenancy agreement stipulated the landlord as an estate and an executor to that estate and that rent was in the amount of \$1.00 per month.

The agent testified that the estate named as applicant is the estate of the female respondent's common-law spouse and the male respondent is her adult son. The agent had no knowledge of whether or not the female respondent had any claim to the estate.

The agent testified that the original owner of the house had passed away while on a trip outside of the country visiting his son, now the executor. He submitted that the tenancy agreement was entered into after the death of the owner by the executor.

Section 1 of the *Act* includes in its definition of landlord the heirs, assigns, personal representatives and successors in title to the owner of the rental unit. As the agent cannot provide any information on the female respondent's status in relation to the estate, I find it is possible that the female respondent may have an interest in the residential property that may be greater than that of a tenancy.

In addition, Residential Tenancy Policy Guideline #9 stipulates that a license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or licensee, is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

The Guideline goes on to list some factors that may weigh against finding a tenancy including that the parties have a family or other personal relationship and occupancy is given because of generosity rather than business considerations.

In the case before me and in the absence of any evidence to the contrary, I find this agreement was entered into between parties with a family relationship and that the occupancy was arranged out of generosity on the part of the estate and executor and not based on business considerations.

A tenancy agreement is defined in Section 1 of the *Act* as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy.

Based on the evidence before me, I find the agreement entered into between the parties is a license to occupy but does not constitute a tenancy agreement under the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and/or utilities; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the

Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Conclusion

Based on the above, I decline to accept jurisdiction in these matters.

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: January 28, 2016

Residential Tenancy Branch

