



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an application under the *Residential Tenancy Act* (“the Act”). The applicant sought an early end to this tenancy and an Order of Possession for the basement rental unit pursuant to section 56.

The respondent did not attend this hearing, although I waited until 11:14 am in order to enable the respondent to connect with this teleconference hearing scheduled for 11:00 am. The applicants (“Applicant L” and “Applicant K”) attended the hearing and were given a full opportunity to be heard, to present testimony, and to make submissions.

Applicant L referred to a previous decision of a Residential Tenancy Branch Arbitrator who determined that substituted service to the respondent through a third party would satisfy the requirements of service of the Notice of Hearing in this matter. Applicant L described service in accordance with the provisions of the substituted service decision dated March 9, 2016. In that decision, the Arbitrator stated that, as there was evidence of a no-contact order between the respondent and the applicants, the applicants were permitted to serve the Application for Dispute Resolution, Notice of Hearing and all supporting documents to the respondent’s sister.

Preliminary Issue to be Decided: Jurisdiction

Does this living arrangement fall within the scope of the *Residential Tenancy Act*?

Background and Evidence

Applicant L testified that the respondent is her step son and Applicant K’s son. She testified that the respondent has been living in the basement of their home for approximately two months with no rent or payment. She testified that there was no agreement between the parties to pay any amount of rent or any agreement with

respect to timelines for the living arrangement. She testified that there was no agreement that the respondent would begin to pay rent after a certain period of time.

Both applicants testified that the respondent has formerly resided in their basement of their home that he has caused damage and therefore they are seeking to ensure he cannot return to their home. It is based on these and other incidents regarding the respondent's behaviour that the applicants have sought an early end to "tenancy".

In her submissions at this hearing, Applicant L testified "I don't think it really is a tenancy". However, both applicants testified that they feel their hands are tied with respect to ensuring the respondent does not return to the premises and that they are unsure of what steps to take with the respondent's property.

The applicants both testified that there is no written agreement with respect to their step son's residence within their home. The applicants both testified that there was no intent to charge rent to their step son. The applicants both testified that there was no timeline agreed upon with respect to their step son's residence within the basement area of their home.

Analysis

The definition section of the *Residential Tenancy Act* describes a tenancy as "a means a tenant's right to possession of a rental unit under a tenancy agreement". I find, based on the testimony of the applicants at this hearing that there was no creation of a tenancy agreement with respect to the step son's residency within their home. I find there is no "tenancy" as defined by the *Residential Tenancy Act*.

To clarify, the *Act* describes a tenancy agreement 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 licence to occupy a rental unit". The requirements for a tenancy agreement under the Residential Tenancy Regulations include a written agreement with standard terms including the provision of rent and any deposits (security and/or pet damage deposits) signed and dated by both parties to the agreement, and written in a manner so as to be easily understood. Tenancy agreements are to be clear in their terms and it is intended that the entering of a tenancy agreement is understood and agreed upon by both parties. This is not the case with respect to the respondent and applicants in this matter. .

Despite the provisions of the Residential Tenancy Regulation, there are certain circumstances in which an oral agreement may be binding and enforceable under the *Residential Tenancy Act*. However, the applicants have testified that there was no written or oral agreement made with respect to their step son's residence.

The *Residential Tenancy Act* applies to

- 2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this living arrangement. The arrangement described by the applicants does not constitute a tenancy enforceable under the *Residential Tenancy Act*. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: April 14, 2016

Residential Tenancy Branch