



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes ET FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for an early end to the tenancy pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The respondent did not attend this hearing, although I waited until 11:30 a.m. in order to enable the respondent to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on November 24, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the respondent by registered mail. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the respondent was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 & 90 of the Act. The hearing proceeded in the absence of the respondent.

Issues

Is the landlord entitled to an order of possession for an early end to the tenancy?

Is the landlord entitled to recover its filing fee?

Background & Evidence

The rental unit is a one bedroom suite in a residential house. The five bedroom upstairs portion of the house is rented to another family of six to seven persons and an attached carriage house is occupied by three persons. The tenancy for the one bedroom unit which is the subject of this application began on May 15, 2010.

The landlord testified that the tenancy was between the landlord and the respondent's girlfriend T.J. The landlord provided a copy of the written and signed agreement between herself and T.J. The landlord testified that the respondent moved into the rental unit as an occupant six to seven months after the tenancy began. The landlord testified that on September 13th or 14th of 2016, the respondent kicked the tenant T.J. out of the rental unit and changed the locks. The landlord returned the balance of the September rent to T.J. and returned her security deposit. The landlord testified that she asked the respondent to sign a new lease but he refused so the landlord does not have any tenancy agreement in place with the respondent. The landlord testified that she has not collected any rent from the respondent.

The landlord also submitted a witness letter from T.J. in which she writes that she has not been able to get access to the rental unit as the respondent has changed the locks. In the witness letter, T.J. requests that the respondent be removed from the rental unit so she can have her apartment back.

The landlord has also provided various witness letters from other tenants of the rental property in support of the landlord's application for an early end to the tenancy.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Pursuant to section 2 of the Act, the Act applies to **tenancy agreements**, rental units and other residential property.

A tenancy agreement is defined under section 1 of the Act as follows:

"tenancy agreement" means 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;

Based on the evidence before me, I find there was never any tenancy agreement in place between the landlord and the respondent. As per the landlord's evidence, the tenancy agreement was between the landlord and T.J. There is insufficient evidence that the tenancy between the landlord and T.J. has ended and a new tenancy agreement was created between the landlord and the respondent. The landlord testified that she has not signed a new lease with the respondent nor has she collected any rent from him. The witness letter submitted by T.J. also indicates that she still believes she has a right to possession of the rental unit. In this case, the respondent is only an occupant who does not share the rights or obligations under the tenancy agreement with the tenant. There is insufficient evidence that the parties entered into a tenancy agreement to include the respondent as a tenant or co-tenant rather than an occupant.

If the landlord wishes to pursue an end to the tenancy with T.J., the landlord would have to make an application naming T.J. as the respondent and end the tenancy by one of the manners permitted under section 44 of the Act.

As I find there is no tenancy agreement in place between the landlord and the respondent, I do not have jurisdiction under the Act over this matter.

Pursuant to subsection 62(2) of the Act, I may make any finding of fact or law that is necessary or incidental to the making of decision or order under the Act. While I am unable to issue an order of possession to the applicant, **I find that there is no valid tenancy agreement in place which legally permits the respondent to occupy the rental unit.**

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that I do not have 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: December 19, 2016



Residential Tenancy Branch

RTB-136