



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for an Order of Possession for cause pursuant to section 55.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

There was a previous hearing of this matter on October 28, 2016 under the file number identified on the first page of this decision where another arbitrator dismissed the landlord's application for failure of service. In the decision of October 28, 2016, the arbitrator presiding over that hearing found that the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") was served on the Respondent on October 10, 2016, that the Respondent failed to dispute the 1 Month Notice and that the effective date by which the Respondent must vacate the premises was November 30, 2016.

The male landlord testified that he served the landlord's current application for dispute resolution dated November 16, 2016 (the "application") by posting it on a conspicuous place on the rental property on November 19, 2016. The Respondent confirmed receipt of the application. In accordance with section 89(2) and 90 of the *Act*, I find that the Respondent was deemed served with the application on November 24, 2016, five days after its posting.

Issue(s) to be Decided

Does the Respondent's occupation of a bedroom in the detached home fall within the jurisdiction of the Residential Tenancy Act?

If so, is the landlord entitled to an Order of Possession for cause?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. The subject property includes a detached single-family home and adjoining empty lots. The Respondent moved a trailer onto the empty lot of the subject property in June of 2016 and began residing there as a tenant. There was a verbal agreement between the parties that the Respondent would pay a monthly rent of \$300.00. In July, 2016 the Township informed the landlord and Respondent that any residency in a trailer on the subject property is a violation of bylaws and must stop. On or about October, 2016 the Respondent vacated the trailer and began residing in one of the bedrooms of the detached home on the subject property.

The Respondent testified that she vacated the trailer and moved into the detached home with the express permission of the landlord. The Respondent gave evidence that she had entered into a new tenancy agreement with the male landlord whereby she would pay \$500.00 monthly rent and reside in the detached home. The Respondent testified that this arrangement was proposed by the male landlord who conceived of it as a way to allow the tenancy to continue while following the bylaws. The Respondent stated that the detached home does not have working locks and she was thus able to gain access without being issued keys. She testified that since moving into the detached home she has not made any rent payment as she is wary that the landlord may remove her from the subject property.

The male landlord testified that he had not permitted the Respondent to move into the detached home, had not proposed that she move into the home, and had not entered into a new rental agreement. Both landlords gave undisputed sworn testimony that the Respondent has made a single payment of \$200.00 in June, 2016 throughout the entire tenancy. The female landlord testified that there were other occupants of the detached home who may have given the Respondent access but the Respondent was never permitted to reside in the home. The landlord entered into evidence a copy of a letter they issued to the Respondent dated October 10, 2016 where the Respondent was told she is not permitted to move into the house and ordered to move out.

Analysis

The landlord's application for an Order of Possession for cause relied on the 1 Month Notice issued to remove the tenant from the trailer on this property. In October 2016, this tenancy ended when the tenant vacated the trailer.

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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 license to occupy a rental unit.

The Respondent provided very little evidence in support of her argument that she entered into a new tenancy when she moved from the trailer to the detached home. The Respondent gave evidence that she has not paid any rent, did not pay a security deposit when entering into the tenancy, and does not require keys to gain access to the detached home as there are no working locks. The landlord denies that a new tenancy was created. Based on the evidence of the parties, I do not find that a new tenancy agreement was created with the Respondent's move from the trailer into the detached home.

I am unable to consider the landlord's application to end a tenancy for cause on the basis of the 1 Month Notice because I find that there is no tenancy agreement between the parties for the bedroom in the detached home.

The Respondent is an occupant, and not a tenant under the definition of section 1 of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupant as a tenant. As I am not satisfied that the landlord agreed to include the Respondent as a tenant in the detached home, the *Act* does not apply to their relationship. No Notice to End Tenancy is necessary as neither the Respondent nor the Applicant are governed by the *Act*. I cannot consider the landlord's application as I have no jurisdiction in this matter.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the landlord's application for dispute resolution.

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 28, 2016

Residential Tenancy Branch