



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

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

The Respondent did not attend this hearing, which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice"), dated December 12, 2016 was served on the Respondent by registered mail sent on that date. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 88 and 90 of the *Act*, I find that the Respondent was deemed served with the landlord's 2 Month Notice on December 17, 2016, five days after mailing.

The landlord testified that the landlord's application for dispute resolution dated January 4, 2017 was sent to the Respondent by registered mail on that date. The landlord provided a Canada Post tracking number as evidence. In accordance with sections 89 and 90 of the *Act*, I find that the Respondent was deemed served with the landlord's application on January 9, 2017, five days after its mailing.

Issue(s) to be Decided

Does the Respondent's occupation of the dispute property fall within the jurisdiction of the Residential Tenancy Act?

If so, is the landlord entitled to an Order of Possession for Landlord's Use?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. The landlord currently owns the property where the Respondent resides. The Respondent began occupying the property in the 1990s when the registered owner of the property was the landlord's father. The landlord testified that there were other occupants on the property at that time and believes that the Respondent may have been allowed onto the property by one of the earlier occupants. The landlord testified that the Respondent took occupancy of the property with the full knowledge and permission of the landlord's father. While the landlord's father was aware of the occupancy there was never a tenancy agreement and no rent was ever paid by the Respondent.

The landlord's father passed away in 1999 and the landlord's mother became the registered owner of the property. The Respondent continued to live on the property and while the landlord's family was aware of the occupancy, no rent was ever paid and there was little interaction with the Respondent. The landlord's mother passed away in 2008 and the subject property transferred to the landlord and his siblings. The landlord has been one of the registered owners of the subject property since 2008. During this time he has continued to permit the Respondent to reside on the property but has not collected or requested any payment for rent. There has never been a written tenancy agreement between the Respondent and the landlord's family. If there was an oral tenancy agreement between the Respondent and the landlord's father, the landlord is unaware of the terms. Throughout the years of the occupancy the Respondent has not contacted the landlord's family to make requests for repair, upkeep or maintenance of the property.

Analysis

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 landlord gave evidence that the Respondent has never paid any rent, did not pay a security deposit, and never entered into an agreement with the landlord. The landlord

testified that there was never a written tenancy agreement between the Respondent and any member of the landlord's family. The Respondent has never paid money for the occupancy, nor does it appear that any consideration of value has been provided for this occupancy. Based on the evidence, I do not find that the relationship between the parties is a tenancy.

I am unable to consider the landlord's application to end a tenancy for landlord's use on the basis of the 2 Month Notice because I find that there is no tenancy agreement between the parties.

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, or any of the historic landlords, agreed to include the Respondent as a tenant in the property, 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: February 1, 2017

Residential Tenancy Branch