



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR

Introduction

This was an application under the *Residential Tenancy Act* (the “Act”) for an order of possession for unpaid rent and for landlord’s use, and a monetary order for unpaid rent.

One of the owners of the applicant numbered company attended on behalf of the company. Two of the other owners were present for portions of the hearing. The applicant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, to refer to evidence, and to call witnesses.

At the outset of the hearing I advised the applicant that I would begin by considering whether I have jurisdiction under the Act to consider the application.

Issue(s) to be Decided

Do I have jurisdiction under the Act to consider this matter?

If so, is the applicant entitled to an order of possession and/or a monetary order?

Background and Evidence

The applicant owner testified that his company purchased the residence at issue several months ago, and was supposed to have taken vacant possession on November 1, 2016. On November 1, 2016 he attended at the residence and was surprised to have the door answered by a person, CH, who identified himself as residing there. The applicant returned later in the day and personally served CH with a 2 Month Notice to End Tenancy for Landlord’s Use (the “2 Month Notice”) on the basis that the company’s intention is to develop the property. The owner also gave CH his contact information. No demand for rent was made and no oral agreement was reached with respect to a tenancy. The applicant owner stated that he considers the occupants “squatters.”

On December 16, 2016 the owner returned to the residence to check on the status of things. A woman, LJ, answered the door. LJ also identified herself as residing in the

home. She claimed that she was not aware of the 2 Month Notice and that she had a tenancy agreement. However, she was unable to produce it then, or when the applicant owner returned after the weekend.

The applicant owner returned on December 19, 2016 with the RCMP. LJ and another man asserted that they were legitimate tenants, and the RCMP could not assist as a result. The RCMP file number given to me by the applicant is reproduced on the cover page of this decision for ease of reference.

On December 20, 2016 the applicant owner served LJ personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). A Proof of Service document was included in evidence. It is witnessed by a third party and signed by LJ.

The 10 Day Notice claims unpaid rent of \$3,000.00 for November and December, 2016. The applicant owner testified that he did not reach any agreement with LJ about the payment of rent. Rather, he claimed \$3000.00 based on comparables in the area.

The owner's application states in part as follows (reproduced as written):

Unfortunately we do not have a signed tenancy agreement as there was no tenancy to begin with. The 'tenants' can not provide an existing tenancy, being asked on multiple occasions to provide one.

Effectively we have people with no tenancy agreement, not paying rent and squatting in our property.

The applicant also gave affirmed and undisputed testimony that he served both CH and LJ with their own copies of this application, notice of hearing, and supporting evidence, by two methods. He sent one application package to CH and another to LJ, both to the mailing address of the residence in question, on January 18, 2017 by registered mail. The applicant provided tracking numbers in support. He also testified that he left two separate application packages, addressed to CH and LJ respectively, in the mail box of the residence in question.

The applicant also advised that he had recently stopped by the residence and that it appears now to have been vacated.

Analysis

Section 2(1) of the Act states that the Act applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A “tenancy agreement” is defined 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.” A “rental unit” means “living accommodation rented or intended to be rented to a tenant.” “Residential property” means:

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

All of these definitions require some intention to exchange living accommodation for something of value, or rent. The applicant owner has stated that there was no such intention. There was no tenancy agreement, express or implied, between the applicant company and the occupants of the residence in question: the occupants did not have the owner’s permission to reside there. Nor is the unit a “rental unit” as it was not rented or intended to be rented to a tenant. Nor is the residence a “residential property” according to the Act’s definition, as it cannot be considered a building containing a “rental unit.”

A landlord can bring an application for an order of possession under s. 46 for non-payment of rent or under s. 48 for landlord’s use of property. The applicant company here has attempted to bring these applications. However, the company is not a “landlord” as defined in the Act, as it has by the applicant owner’s own admission not permitted occupation of the unit under a tenancy agreement as contemplated by (a)(i) of the definition of “landlord.” Nor is the applicant company exercising powers or rights or performing duties under the Act or a tenancy agreement, as set out in (a)(ii) or (c) of the Act’s definition of “landlord”:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The applicant owner of the residence is in an unfortunate position. However, the remedy is not under the Act, and I dismiss the application for lack of jurisdiction.

Conclusion

I accept the undisputed evidence of the applicant that the occupants are squatters. As the occupants are not tenants, they have no rights under the Act. The owner of the property may wish to advise local law enforcement that the occupants have no legal rights to be in the residence or on the property.

This matter is dismissed for want of jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: February 08, 2017

Residential Tenancy Branch

