



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

The Application for Dispute Resolution filed by the Landlord seeks the following:

- a. A determination as to whether the Residential Tenancy Branch has jurisdiction.
- b. An Order of Possession if the Residential Tenancy Branch has jurisdiction
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the one month Notice to End Tenancy was personally served on the Respondent on December 31, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Respondent by mailing, by registered mail to where the Respondent resides on January 17, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Residential Tenancy Branch has jurisdiction?
- b. Whether the Applicant is entitled to an Order of Possession?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The Applicant inherited the property in 1998. She is experiencing health problems and has not lived in the property for the past 3 or 4 years.

In August 2016 she was advised by the police that the Respondent had moved into the rental property and put a for sale sign on it. The Respondent is the nephew of the Applicant. The police suggested that as there had been break-ins in the area that perhaps she should allow him to stay in the short term to prevent vandalism. It has come to the applicant's attention that the respondent is selling her belongings. She is afraid of him.

The Applicant has did not give the Respondent permission to move in. The Respondent is a squatter. There was no agreement to pay rent. The Respondent has not paid rent or a security deposit. The parties have not entered into a tenancy agreement whether oral or in writing. The Applicant wants to remove the Tenant but the police have told her she must go through the Residential Tenancy process.

The applicant testified the Respondent has put the property at significant risk and she is very concerned about the risk he poses for the property.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - ...
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - ...
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord

Analysis:

Section 2 of the Residential Tenancy Act provides as follows:

What this 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.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force

The following definitions found in section 1 are relevant.

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;

(c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"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 licence to occupy a rental unit;

I determined the Residential Tenancy Act does not apply and the Residential Tenancy Branch does not have jurisdiction for the following reasons:

- The parties have not entered into a tenancy agreement.
- The property was not intended to be rented.
- The Respondent has not paid rent and there is no agreement for the payment of rent.
- The Respondent took possession of the property without the permission of the landlord and is a squatter. He has no right to remain in the property. .

Determination and Orders:

As a result I decline to hear that matter for lack of jurisdiction.

Had the Residential Tenancy Act applied, the landlord would have been entitled to an Order of Possession as the Respondent failed to dispute the Notice to End Tenancy and the landlord had grounds. The Act provides that where a Respondent fails to file an Application for Dispute Resolution to dispute the Notice to End Tenancy the tenant is deemed to have accepted the end of tenancy and must vacate the rental unit.

This decision is final and binding on the parties.

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 07, 2017

Residential Tenancy Branch

