



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR OPR

Introduction

This participatory hearing was convened after the issuance of a December 19, 2016 Interim Decision of Adjudicator N. Hayes. Adjudicator Hayes determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord.

He reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The tenant confirmed receipt of the landlord's 10 Day Notice, and the landlord's evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find that tenant was duly served with these documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

Testimony was provided by both parties, while a copy of the Residential Tenancy Agreement was provided to the hearing as part of the landlord's evidentiary package. The testimony and tenancy agreement demonstrated that this tenancy began on October 15, 2016 and was a fixed term lease set to expire on March 14, 2017. Rent of \$550.00 was due on the 14th of each month and a security deposit of \$275.00 continues to be held by the landlord.

The landlord gave testimony that his application for Direct Request was reconvened to a participatory hearing because the adjudicator had concerns surrounding the standing of the *Residential Tenancy Branch* to hear this matter. The adjudicator noted in his decision that, "Section 4 of the *Act* establishes that living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation is not governed by the *Act*. I find that

the tenancy agreement indicates that the tenant is renting a room in the house, with no indication as to whether the tenant has access to their own bathroom or kitchen facilities. I further find that there is no indication as to whether the landlord is the owner of the accommodation being rented out.”

The tenant testified that he vacated the rental unit on February 22, 2017. The landlord is seeking a Monetary Order of \$1,728.37. This figure represents unpaid rent and utilities for January and February 2017, as well as anticipated loss of rental income for February to April 2017.

Analysis – Section 4

After hearing the testimony of both the landlord and the tenant, I agree with the assessment of the adjudicator and find that I have no standing to hear or rule on this matter.

Section 4 of the *Act* notes;

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

Both the landlord and the tenant stated that this accommodation consisted of a room in a home that was also occupied by the owner. The landlord explained that on occasion the owner would use the kitchen and bathroom facilities and stored food items in the refrigerator of the tenant.

I find that the *Act* does not apply to this matter and I have no jurisdiction to make a decision on this matter because the evidence presented shows that the tenant shares bathroom and kitchen facilities with the owner of the accommodation.

Conclusion

I decline to rule on this matter as I have no jurisdiction to consider this application.

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: March 17, 2017

Residential Tenancy Branch

