



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This was an application for an order of possession for unpaid rent under s. 55 of the *Residential Tenancy Act* (the “Act”). The applicants originally also sought recovery of the application filing fee but withdrew that request at the hearing.

Both of the applicants, who are father and daughter, attended the hearing, along with the daughter’s husband. They were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As the respondent did not attend the hearing, service of the application and the notice of hearing were considered. The applicants provided affirmed testimony that these materials were sent by registered mail respondent’s address and provided a Canada Post registered mail tracking number in support. In accordance with sections 89 and 90 of the Act, I accept that the respondent has been served with the application and notice of hearing.

Based on the documentary and oral testimony of the applicants, I advised that the Residential Tenancy Branch may not have jurisdiction. The applicants were aware coming into the hearing that this may be the case.

Issues to be Decided

Does the respondent’s occupation of the disputed property fall within the jurisdiction of the Act?

If so, is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The applicants gave affirmed testimony that the male applicant, JH, agreed to rent a room in his home, which he built himself and has resided in for 30 years, to GC in November of 2016. There is no written tenancy agreement however. Although JH

signed a document from Social Services regarding the monthly amount that GC would be paying, GC did not give him a copy of it. The applicants further stated that GC has not paid any rent to JH since moving in, and JH personally served GC with a 10 Day Notice to End Tenancy for Unpaid Rent on January 17, 2017.

There was also an affidavit sworn March 9, 2017 by JH in evidence. In the affidavit, JH recounts that shortly after GC moved in to his residence, two of her sons and both of their girlfriends also moved in. One of the sons is 14 and the other is in his 20s. Although GC was only meant to be renting a room, she and her family began occupying the whole residence, often inviting between 10 and 20 people over, and often drinking and using drugs.

The applicant JH was threatened with violence and the home was damaged when he raised his concerns. He began sleeping in his car in the garage. JH's family became aware of the situation in early February and JH is now currently living with his daughter, CH.

The RCMP was called when CH retrieved her father. According to the applicants, the RCMP recognize that GC and her family and their guests are damaging the residence. However, the RCMP understood that the police could not intervene as this was a tenancy and referred the applicants to the Residential Tenancy Branch.

The applicants also stated that GC is currently being investigated for having forged cheques from JH's bank account, and that GC has also sold JH's antique furniture without his consent. JH continues to pay for utilities. After advising his insurance company that he cannot reside in his own home, his premiums have doubled, which he cannot afford.

Analysis

Section 4(c) of the Act says that the Act does not apply to "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation." Based on the undisputed testimony of the applicants, GC was supposed to be leasing a bedroom and sharing the bathroom and kitchen with JH, the owner.

Accordingly, I conclude that I do not have jurisdiction under the *Residential Tenancy Act*. This is a matter for the police.

Conclusion

The Residential Tenancy Branch does not have jurisdiction in this matter.

This is a matter for the police.

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: March 30, 2017

Residential Tenancy Branch