



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARPER GREY LLP PER MICHAEL DROUILLARD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72.

The Respondent did not attend this hearing, which lasted approximately 15 minutes. The corporate landlord was represented by its agent KG and counsel MD (the "landlord") who were given a full opportunity to be heard, to present affirmed testimony, to make submissions and call witnesses.

The landlord gave evidence that a 10 Day Notice to End Tenancy for Unpaid Rent dated July 27, 2017 (the "10 Day Notice") was served on the tenant by registered mail sent on July 28, 2017. 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 10 Day Notice on August 1, 2017, five days after mailing.

The landlord testified that the landlord's application for dispute resolution dated August 16, 2017 was served on the tenant by registered mail sent on August 18, 2017. The landlord provided a Canada Post tracking number and delivery confirmation as evidence of service. I find that the Respondent was deemed served on August 23, 2017, five days after mailing in accordance with sections 89 and 90 of the Act.

At the At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the

application was filed the tenant has failed to pay any rent and that the total arrears as of the date of the hearing is \$9,758.06. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent becoming due is reasonably foreseeable, I amend the landlords' Application to increase the landlord's monetary claim from \$7,258.06 to \$9,758.06.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award as claimed? Is the landlord entitled to recover the filing fee for the application from the Respondent?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. The corporate landlord purchased the rental property on March 6, 2017. They were unaware that the Respondent was an occupant on the property at the time of the purchase. The corporate landlord was later informed by the realtor who facilitated the transaction that the Respondent occupied the lands and was paying rent in the amount of \$1,250.00 to the Seller. There is no written tenancy agreement between the Corporate Landlord and the Respondent. The Corporate Landlord is unaware if there was a written tenancy agreement between the Respondent and Seller. The Corporate Landlord is unaware when the Respondent first began occupying the property.

The landlord's agent KG testified that she was told by the realtor that the Respondent began occupying the property with his spouse. When the marriage ended the Respondent's spouse ended the tenancy and left the property. The Respondent remained on the property and continued to pay monthly rent to the Seller. KG testified that she was told this information by the realtor and has no first-hand knowledge of the relationship between the Seller, the Respondent and the Respondent's former spouse.

The landlord testified that the Respondent has not paid anything for rent since the March, 2017 purchase of the property. The landlord said that there was no information in the contract of purchase and sale with the Seller regarding the tenancy and any rent paid by the Respondent to the Seller for the month of March, 2017. The landlord calculates that based on a monthly rent of \$1,250.00 the Respondent owes \$9,758.06 as of the date of the hearing.

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 the landlord any rent since the March, 2017 property purchase. The landlord was unaware of the Respondent’s occupancy of the property until after the property purchase was completed. The landlord testified that the contract of purchase and sale did not provide any information that the property was occupied, and there is no express agreement that they would take over the existing tenancy. The landlord gave evidence that they have little information about the arrangement that existed between the Respondent and the Seller and all information they have was provided by the realtor who facilitated the transaction after the sale was completed.

Based on the evidence provided, I do not find that there is a tenancy relationship between the parties. The Respondent has never paid the landlord any money for the occupancy and there is little evidence of an agreement between the Respondent and the Seller. The landlord said that they believe a tenancy agreement existed based on information provided by a realtor. But the realtor was not called as a witness nor was any written statement from the realtor submitted into evidence. Under the circumstances, I find that there is insufficient evidence to conclude that there is a tenancy agreement between the parties.

I am unable to consider the landlord’s application to end a tenancy for unpaid rent on the basis of the 10 Day Notice, or a monetary award arising from unpaid rent because I am unable to find that there is a 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: November 6, 2017

Residential Tenancy Branch