



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the respondent's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72.

The applicant, the respondent and a person assisting the respondent attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The applicant testified that the notice of this hearing was personally served to respondent on September 20, 2017. The respondent confirmed service of the notice.

The applicant testified that a 10 Day Notice for Unpaid Rent (the 10 Day Notice) was personally served to the respondent on September 08, 2017.

The respondent disputed the applicant's service and submitted that the 10 Day Notice was personally served to the respondent's parents on September 18, 2017.

The respondent testified that the applicant is their brother-in-law and that she lives in the unit with her parents, the applicant's father-in-law and mother-in-law. The respondent testified that she has financial shares in the unit based on a verbal agreement and that she has witnesses to this verbal agreement. The respondent testified that she can provide bank and visa statements proving that she has purchased

material for the construction of the unit in 2006, that she assisted the applicant in building the unit and that she has a financial interest in the unit. The respondent testified that they pay \$1,500.00 each month which is for shares of the mortgage. The respondent submitted that they act as a landlord for the occupants in the basement suite of the unit.

The respondent testified that they stopped making payments towards the mortgage when the applicant would not negotiate to pay the respondent for shares in the house that the respondent has. The respondent stated that the applicant recently made an offer to pay back only what the respondent has paid into the construction of the unit, but not the actual values of what the shares are worth now.

The applicant testified that the respondent has no financial interest in the unit and that the respondent has not paid rent since paying \$2,000.00 on May 05, 2017. The applicant admitted that the respondent used their credit card to make purchases in the construction of the home. The applicant stated that they paid the respondent back in cash as the respondent just wanted to collect points for traveling to another country to visit their husband. The applicant testified that the respondent was paying \$1,000.00 towards rent until sometime in 2014, at which time the applicant raised the monthly amount to \$1,200.00. The applicant stated that the monthly payment was raised to \$1,500.00 in June of 2016, which is \$900.00 for the unit the respondent and her parents live in and \$600.00 for the rental of the basement. The applicant admitted that no written notice was given to raise the monthly amounts payable by the respondent. The applicant testified that he did not offer to pay the respondent any money for shares in the unit. The applicant testified that the respondent is not named on the land title or the mortgage of the unit.

Analysis

Section 2 (1) of the *Act* establishes that the *Act* applies to tenancy agreements, rental units and other residential property.

Section 1 of the *Act* defines a tenancy agreement 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.

Based on the affirmed testimony of both parties, and on a balance of probabilities, I find that I prefer the respondent's testimony. I find that it is reasonable to conclude that if the respondent was involved financially in the construction of the home that she and her

parents were intending on living in, it is likely that she would have a financial interest in the home and that the unit she lives in is not a rental unit. I find that the financial arrangement with the applicant is not a tenancy agreement and as such, falls outside of the jurisdiction of the *Act* due to the respondent's financial interest in the unit. I find that a contract does not need to be in writing to be legally binding.

In consideration of the respondent's testimony, I find the applicant bears the burden to prove that they have a tenancy agreement with the respondent. I find that the applicant has admitted that the respondent was financially involved in the construction of the unit. I find that the applicant did not provide a tenancy agreement, evidence that a security deposit was accepted, or any other evidence to establish a tenancy agreement exists between the applicant and the respondent. I find that the applicant has changed the monthly amount payable from the respondent in amounts and ways that are not in accordance with the *Act*, which indicates that the applicant does not consider the financial arrangement for the unit as being governed by the *Act*. I find that the only evidence that the applicant provided was the 10 Day Notice but no evidence was provided that the applicant has the right to enforce the 10 Day Notice under the *Act*.

Based on the affirmed testimony of both parties, a balance of probabilities and the above, I find that I do not have jurisdiction to hear this matter.

Conclusion

I decline to proceed due to a lack of jurisdiction.

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 16, 2017

Residential Tenancy Branch