



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for the application from the landlord pursuant to section 72.

This matter was originally set for hearing by telephone conference call at 10:30 am on this date. Due to administrative issues the hearing was not able to occur at that time. The Residential Tenancy Branch contacted both parties to reschedule the hearing for 12:00 pm on this same date. Both parties confirmed their availability and said they would call in to join the telephone conference call at that time.

While the line remained open and the phone system was monitored for thirty minutes the only participant who called into the hearing during this time was the respondent. The respondent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Background and Evidence

The respondent provided undisputed testimony regarding the following facts. The respondent is the owner of the dispute property. There is a large storage building on the property which was originally used to store industrial equipment and vehicles. The parties entered into an agreement in 2014 which provides that the applicant would pay monthly rent of \$3,000.00 and he would be permitted to store equipment in the rental property. There was never an agreement that the applicant could occupy, or reside in

the rental property. The respondent testified that the storage building has electricity and running water but is not zoned for residential use.

The respondent said that he learned in 2016 that the applicant was residing in the rental property. He immediately informed the applicant that he was not permitted to reside in the property. The respondent said that he has continued to inform the applicant that he is not permitted to reside in the property. He issued the 10 Day Notice dated December 20, 2017 as he was not aware of other ways to resolve the issue. The respondent testified that while he issued a 10 Day Notice pursuant to the *Act*, he does not believe that the relationship with the applicant is a residential tenancy.

Analysis

The definitions of a “rental unit” and a “tenancy agreement” are outlined in the following terms in section 1 of the *Act*:

“rental unit” means living accommodations rented or intended to be rented to a tenant;

“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 respondent gave undisputed evidence that the subject property is intended to be used for industrial storage, that the written agreement between the parties is titled “Storage Agreement” and the applicant has been repeatedly informed that they are not permitted to reside in the property. Based on the undisputed evidence, I find that the property occupied by the applicant is not a rental unit as it is not living accommodations and was never intended to be rented to a tenant. That the applicant currently occupies and resides in the building does not convert the space to a living accommodations. I do not find that the relationship between the parties is a tenancy.

I am unable to consider the application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent because I find that there is no tenancy agreement between the parties.

The Applicant 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. As I find that there is no

tenancy agreement between the parties I find that 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 present 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 tenant'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: January 23, 2018

Residential Tenancy Branch