



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR FFL

Introduction

This application was originally made by Direct Request (ex-parte application) however after review of the materials, the matter was set for a participatory hearing to address the application pursuant to the *Residential Tenancy Act* (“the 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 tenant pursuant to section 72

The respondents did not attend this hearing, although I waited until 10:05 a.m. in order to enable the respondents to connect with this teleconference hearing scheduled for 9:30 a.m. The applicants and their daughter (the ‘landlord-applicant’) as their interpreter attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions. One witness attended and gave evidence about service of documents on behalf of the applicants.

Preliminary Matter: Jurisdiction under the Act

Before making a determination as to whether the applicants are entitled to an Order of Possession and monetary order for Unpaid Rent, I must determine whether I have jurisdiction for this matter to be heard in this forum. At the outset of the hearing, the ‘landlord-applicant’ indicated that there was no written tenancy agreement between these two parties, applicants and respondents. Further, the landlord-applicant testified that the applicants were the parents of one of two tenants and in-laws to the other two tenants (son and his spouse).

The landlord-applicant asserted that this was a tenancy agreement between the two parties despite the lack of a written agreement. It is accurate that a tenancy does not require a written tenancy agreement however in this case, the familial nature of the

relationship and some of the amorphous details of payment arrangement suggest that this was not intended to be a residential tenancy agreement at the outset.

The landlord-applicant testified that the respondents are required to pay a 'rental amount' of \$700.00 however there was no set date for the payment of rent. The landlord-applicant initially testified that the respondents were to pay their parents between the 30th and the 5th of each month. Later in her testimony, the landlord-applicant testified that the respondents were required to pay between the 28th and 3rd of each month. The landlord-applicant also testified that another son lives upstairs with his parents – he pays an amount to them monthly as well. The landlord-applicant also testified that the respondents were required to pay a portion of the utilities however no documentation regarding an agreement with utilities was submitted as evidence for this hearing. The landlord-applicant testified that the respondents did not pay a security deposit to the applicants as they are related to each other. That is also the reason that their monthly payment had a time period of approximately 5 days to pay towards the parents' mortgage amount.

Over the course of the hearing, the landlord-applicant testified that acrimony began between the applicants and respondents when the respondents allowed 2 other people (the son's spouse's parents) to reside in the rental unit. As a result of disagreements about the living situation and other problems between the parties, the applicants began to take action under the Residential Tenancy Act.

A letter from the applicants demanding payment of utilities was provided to the respondents on October 29, 2017. The landlord-applicant gave evidence that the applicants then served the respondents with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on November 15, 2017 in person. However, the document is also dated November 29, 2017. The details of service were provided in a way that was unclear: the landlord-applicant was confused and referred to several different service dates and methods for each item required to be served to the respondents. Furthermore, during the period before this hearing, a letter was written the respondents indicating that, if they paid the money owed, the application to enforce the 10 Day Notice and seek an Order of Possession would be withdrawn.

The landlord-applicant testified that the tenants stopped paying 'rent' in October – November 2017 and subsequently accrued outstanding utility bills. The landlord-applicant provided this time frame because the respondents are not required to pay rent on a set date, as indicated above. Therefore, I note that, if I were to have jurisdiction of this matter, it would be very difficult to assess the details of any arrangement or

agreement between the parties. The landlord-applicant also testified that the respondents have failed to pay half of a pest control bill that the respondents had paid without incident in the past.

As there is no formal written agreement between the parties, it becomes more difficult to determine the nature of the agreement between the parties. The lack of a written agreement combined with the lack of a set date for a monthly payment to the applicants as well as the lack of security deposit paid and the nature of the dispute between parties (in-laws moved in) that resulted in a disruption of the normal interactions between these two parties suggest that this was not intended at the outset to be a Residential Tenancy matter.

The landlord-applicant testified that there is now an amount of \$5051.80 outstanding and owed from the tenants to the landlord. However, as with the other claims regarding rent and an agreement to pay utilities or pest control services, there is insufficient documentation to show the nature of the arrangement between parties.

Based on my obligation to consider jurisdiction as well as the requirement that the applicant establish the facts and evidence to support their claim and based on my finding that I lack sufficient evidence to determine the nature and details of this tenancy, I decline to hear this matter.

Conclusion

I decline to hear this matter as I do not have jurisdiction to do so.

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: February 19, 2018

Residential Tenancy Branch