



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Applicant under the *Residential Tenancy Act* (the “Act”) seeking an Order of Possession and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant, who provided affirmed testimony. The Respondent did not attend. The Applicant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As the Respondent did not attend the hearing, I confirmed service of these documents as explained below.

The Respondent stated that the Application and the Notice of Hearing were sent to the Respondent on June 1, 2018, by registered mail and provided me with the registered mail tracking number. With the consent of the Applicant, I logged into the mail service providers website and confirmed that the registered mail was sent as described above and picked up and signed for by the Respondent on June 18, 2018. As a result of the above and pursuant to section 90 of the *Act*, I find that the Respondent was deemed served on June 6, 2018, five days after the Application and the Notice of Hearing were sent by registered mail. In any event, the mail service provider confirmed that the Respondent picked up the registered mail on June 18, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Applicant, copies of the decision and any orders issued in his favor will be e-mailed to him at the e-mail address provided in the hearing.

As there was no written tenancy agreement before me for consideration, I asked the Applicant to provide me with details about the tenancy, at which point I became aware that the Applicant was not the person who entered into a tenancy agreement with the Respondent. The Applicant testified that he co-owns the property with another party, and that this other party entered into a tenancy agreement with the Respondent. As the Applicant was not the person who entered into the tenancy agreement, he was only able to provide me with general details about the tenancy and did not know for certain whether those details were accurate. For example, the Applicant was unsure of the exact date the tenancy began, if the rent was due on the first day or the last day of the month, or whether rent had been paid for the current month. The Applicant stated his belief that rent was \$1,300.00 per month and that the tenancy, which he stated began sometime near the end of April, was month-to-month.

Based on the above, I find that I must first determine whether I have the jurisdiction to hear this matter under the *Act* prior to considering the merits of the Application. Section 1 of the *Act* defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Although the Respondent stated that he is a co-owner of the property, he acknowledged that the other owner is the one who entered into a tenancy agreement with the Respondent. Further to this, he did not submit any documentary evidence to demonstrate his ownership of or ownership interest in the property or to demonstrate that he has authority to act on behalf of the owner who entered into a tenancy agreement with the Respondent.

Policy Guideline 27 states that the Legislation does not confer upon the Residential Tenancy Branch (the “Branch”) the authority to hear all disputes regarding every type of relationship between two or more parties. It also states that the Branch only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations. Based on the above, I find that there is insufficient evidence before me to satisfy me on a balance of probabilities that the Applicant is a landlord under the *Act*, and as a result, I am not satisfied that this is a landlord and tenant dispute over which I have jurisdiction under the *Act*. As a result, I decline to hear this matter for lack of jurisdiction and I encourage the parties to seek independent legal advice in relation to this matter.

In any event, even if I had been satisfied that the Applicant was a landlord under the *Act*, which I am not; as the Applicant admitted that he was not the person who entered into the tenancy agreement with the Respondent and as a result, had few details about the tenancy, I was not satisfied, on a balance of probabilities, that any tenancy that should exist is not currently a fixed-term tenancy which cannot be ended for landlord’s use prior to the end of the fixed term.

As the Landlord was not successful in his Application, I decline to grant him recovery of the filing fee.

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: July 17, 2018

Residential Tenancy Branch