



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes ET FF

Introduction

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

- an early end to this tenancy and an order of possession pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The respondent did not attend this hearing, although I waited until 9:45 a.m. in order to enable the respondent to connect with this teleconference hearing scheduled for 9:30 a.m. The applicant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The applicant testified that on December 29, 2018, a copy of the Application for Dispute Resolution and Notice of Hearing was served to the respondent by leaving a copy in the doorjamb of the main door of the rental unit. The applicant testified the respondent was home but would not answer the door.

Based on the above evidence, I am satisfied that the respondent was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the respondent.

Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the applicant entitled to an order of possession? Is the applicant entitled to recover the filing fee for this application from the respondent?

Background and Evidence

The applicant testified that the respondent is an illegal squatter in his home. The applicant testified that the original tenant with whom he had a rental agreement vacated the rental unit in August 2018. The respondent was a roommate of the original tenant. After the original tenant moved out, the respondent changed the locks to the rental unit and refused to vacate.

The applicant testified that he has no tenancy agreement with the respondent nor has the respondent paid any rent since the original tenant vacated. The applicant testified that in October 2018 he did serve the respondent a 10 Day Notice to End Tenancy, naming the respondent a tenant but did so only because he thought that is what he had to do to get the respondent to vacate.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Pursuant to section 2 of the Act, the Act applies to **tenancy agreements**, rental units and other residential property.

A tenancy agreement is defined under section 1 of the Act as follows:

***"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 licence to occupy a rental unit;*

Based on the evidence before me, I find there was never any tenancy agreement in place between the applicant and the respondent. As per the landlord's evidence and testimony, the respondent was just a roommate of his previous tenant. I find that no tenancy agreement was entered into written or oral, express or implied, between the applicant and the respondent. The respondent testified that he did not enter into any new lease with the respondent after his original tenant vacated nor has the respondent paid any rent since.

As I find there is no tenancy agreement in place between the applicant and the respondent, I do not have jurisdiction under the Act over this matter.

Pursuant to subsection 62(2) of the Act, I may make any finding of fact or law that is necessary or incidental to the making of decision or order under the Act. While I am unable to issue an order of possession to the applicant, **I find that there is no valid**

tenancy agreement in place which legally permits the respondent to occupy the rental unit.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that I do not have jurisdiction over this matter.

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 22, 2019

Residential Tenancy Branch