



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord was accompanied by his agent.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. The tenant informed me that he had not served two of his documents on the landlord. These documents are entitled "*Motion to dismiss based on lack of jurisdiction*" and "*Notice of protest and duress*". Since the landlord was not served with these documents, they were not used in the making of this decision. I find that the parties were served with the remainder of evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Matters

At the start of the hearing, the tenant stated that this matter does not come under the jurisdiction of the *Residential Tenancy Act* and therefore must not be heard by the Residential Tenancy Branch. The tenant stated that he is going to charge the Branch a fee of \$200,000.00 for his attendance at this hearing. The tenant also informed me that if I do not dismiss the landlord's application he is going to sue me personally.

The tenant stated that he believed that this matter does not fall within the jurisdiction of the Residential Tenancy Branch for two reasons.

1. There is no written tenancy agreement
2. The tenant is part owner of the property

The tenant stated that he paid rent to the landlord every month but sometimes instead of a monetary amount, he provided services to the landlord. Even though there is no written tenancy agreement, since the tenant occupies the property of the landlord and pays rent every month, I find that a tenancy exists and the relationship between the two is that of a landlord and tenant.

A tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the Residential Tenancy Branch may decline jurisdiction because the *Act* would not apply.

The tenant stated that he is part owner of the property and is on title. The landlord stated that the tenant does not have interest in the property and is not on title.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the tenant claimed he was on title and the landlord stated that the tenant was not on title. The tenant did not provide documentary evidence to support his claim.

Based on the above, I find that the relationship between the parties is that of landlord and tenant and that this dispute falls within the jurisdiction of the *Residential Tenancy Act*.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent and the filing fee?

Background and Evidence

The parties agreed that the tenant moved in on June 28, 2018. There is no written tenancy agreement. The rental unit consists of a house and cottage which are both in the possession of the tenant.

The tenant testified that the monthly rent is 3,600 per month while the tenant stated that it is \$3,400.00. The parties agreed that the monthly rent is due in advance on the first of each month. The tenant stated that he has made multiple rent payments for which he has receipts. The tenant also stated that he had done some work around the house in lieu of some of the rental payments.

The landlord agreed that the tenant made some payments but still owed rent for several months. The tenant admitted that the last payment he made was in April 2019 and has not made any payments since then.

On April 01, 2019, the landlord served the tenant with a ten-day notice to end tenancy for \$3,600.00 that was due on March 01, 2019. The tenant acknowledged having received the notice but added that it was served to him on April 02, 2019. The tenant also stated that he had paid rent for April and the landlord denied having received rent.

The landlord is applying for an order of possession effective two days after service on the tenant and for a monetary order in the amount of \$3,600.00 for unpaid rent for March 2019 plus \$100.00 for the filing fee.

Analysis

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. I find that the tenant received the notice to end tenancy for unpaid rent, on April 02, 2019 and did not full pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I further find that the landlord is entitled to \$3,600.00 for unpaid rent. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* in the amount \$3,700.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession **effective two days after service** on the tenant and a monetary order for **\$3,700.00**.

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 02, 2019

Residential Tenancy Branch