



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHLAND VILLA MOTEL and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, RP, PSF, RR, MNDCT
For the landlord: OPR, MNRL

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant/applicant (hereafter “tenant”) applied for an order cancelling the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), an order requiring the landlord to make repairs to the rental unit, for an order for the landlord to provide services or facilities agreed upon but not provided, an order allowing a reduction in rent, and a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation.

The landlord/applicant (hereafter “landlord”) applied for an order of possession of the rental unit pursuant to a Notice and a monetary order for unpaid rent.

The landlord and landlord’s agent attended the hearing; the tenant did not attend.

The landlord submitted documentary evidence and testimony that the tenant was served with their Application for Dispute Resolution and Notice of Hearing by registered mail and that the tenant collected the registered mail on September 3, 2019. The registered mail number is listed on the style of cause page of this Decision.

Based upon the landlord’s submissions, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord’s application in the tenant’s absence.

Thereafter the landlord and the landlord's agent were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Procedural matter-

Despite having her own application for dispute resolution set for hearing on this date and time, the application of the landlord and the Notice of these Hearings, the tenant did not appear.

Therefore, pursuant to section 7.3 of the Rules, I dismiss the application of the tenant, without leave to reapply.

Issue(s) to be Decided

Does this dispute fall under the jurisdiction of the Residential Tenancy Act?

If so, is the landlord entitled to an order of possession of the rental unit and a monetary order for unpaid rent?

Background and Evidence

The landlord's agent stated that she was the agent and translator for the owner of the listed residential property. The agent said that they served the tenant with the Notice on July 13, 2019, by personal service. The landlord submitted a copy of the Notice, which listed \$1,500.00 in unpaid rent.

The agent said that the applicant/tenant was not a tenant, but rather she was a guest at their hotel. The agent, confirmed by her consultation with the landlord during the hearing, said that the parties were not landlord/tenant, that there was no tenancy agreement, no tenancy, or monthly rent paid.

The agent said that there is no written documentation showing the tenant had authority to stay in the hotel room, as she was a guest in a hotel.

The agent said that they tried to have the applicant/tenant removed from the property as a non-paying guest, but that the legal authorities would not do so. The agent said that they would not remove the applicant/tenant as this dispute was under the Act and should be dealt with by the Residential Tenancy Branch ("RTB").

Analysis

In order for either party to succeed in this application, they must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord and tenant relationship.

Section 13 of the Act gives the requirements for tenancy agreement, among which include the standard terms, the date the tenancy agreement is entered into, the start date of the tenancy, and the amount of rent payable.

In the case before me, I find the parties provided insufficient evidence that a consensus as to the terms of the tenancy, such as to the start date of the tenancy or the terms and condition, were ever agreed upon by the parties. I do not find the applicant/tenant paid a security deposit in contemplation of a tenancy.

I additionally find there is insufficient evidence that the parties ever contemplated entering into a tenancy and that it was the applicant/landlord's position that there was no tenancy.

I therefore cannot find on a balance of probabilities that the applicant/tenant and applicant/landlord had entered into a landlord-tenant relationship and I therefore decline to find jurisdiction to resolve this dispute.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute contained in either application for dispute resolution of the parties and I have declined jurisdiction.

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: September 23, 2019

Residential Tenancy Branch