



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The applicant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the applicant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed that the landlord and I were the only ones who had called into this teleconference.

The landlord confirmed receipt of the application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the dispute resolution package and evidence. The landlord testified that she had personally served the applicant with her evidence package on October 29, 2019. In accordance with section 88 of the *Act*, I find the applicant duly served with the landlord's evidence package.

The landlord testified that she had personally served the applicant with the 1 Month Notice to End Tenancy for Cause, on September 30, 2019. Accordingly, I find that the 1 Month Notice was duly served to the applicant in accordance with section 88 of the *Act*.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

Issue(s) to be Decided

Does the Respondent's occupation of the dispute property fall within the jurisdiction of the Residential Tenancy Act?

If so, is the landlord entitled to an Order of Possession for Cause?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. The landlord testified that named tenant in the tenancy agreement is now deceased, and the applicant in this dispute is the tenant's son. The landlord testified that the applicant took occupancy of the property without permission of the landlord. The landlord testified that in the summer the son had arrived with a camper, stating that he was there to assist with his ill mother. The landlord testified that the applicant is still there despite the fact that the mother had passed away on September 16, 2019. The landlord provided a copy of the obituary for RR, which she had located to confirm this.

The landlord submitted a copy of the tenancy agreement which only names the deceased, RR, as the tenant. Monthly rent is currently set at \$700.00 per month. The landlord testified that she had only received monthly rent from RR, and never from the applicant. The landlord testified that since RR had passed away, she had not received any rent. The landlord had served the applicant with a 10 Day Notice for Unpaid Rent, which is awaiting a decision from an adjudicator. The landlord served the applicant with a 1 Month Notice on September 30, 2019 for breach of a material term as she feels the applicant is not a tenant on the agreement, and has refused to vacate the property.

The landlord testified that she was never informed by the applicant that his mother was now deceased, and the landlord has not received any confirmation regarding who is part of the estate of RR.

Analysis

The definitions of a "tenancy", "tenant", and "tenancy agreement" are outlined in the following terms in section 1 of the Act:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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;

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

I find that the named tenant in this tenancy had passed away as of September 16, 2019. I find that the applicant is not named in the tenancy agreement as a tenant, nor has he ever paid any rent to the landlord for this tenancy. I am not satisfied that the applicant had demonstrated that he is part of the estate of the deceased tenant. Accordingly, I find that a tenancy did not exist between the applicant and the landlord, and I am unable to consider the application as I have no jurisdiction in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: November 21, 2019

Residential Tenancy Branch