



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPT, FFT

### Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession of the rental unit for the Applicant, and to recover the cost of his filing fee.

The Applicant and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Applicant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In considering service of the Applicant's Application documents, as well as the documentary evidence back and forth, the Applicant said that he served the Application documents and his evidentiary submissions to the Landlords in person on March 9, 2020, which was ten days prior to the hearing. The Landlords advised that they received these documents; however, they said they were unable to serve the Applicant with their evidentiary submissions, given time constraints in obtaining documents.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Applicant entitled to an order of possession?
- Is the Applicant entitled to recover of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that they never signed a tenancy agreement. They agreed that the Applicant was friends with the tenants and wanted to move in with them. The Parties agreed that they had a meeting in February 2020 to discuss the possibility of the Applicant moving into the rental unit. The Parties agreed that the Applicant filled out an application form for the Landlords. The Parties agreed that the Tenant lived in the rental unit for approximately three to four weeks in February and March 2020, and that he paid the Landlords the rent for February 2020. The Parties agreed that the Applicant was going to pay the security deposit for the tenants; however, he never did. The Parties agreed that the existing tenants in the rental unit paid the rent for March 2020.

The Parties agreed that the Applicant was locked out of the rental unit, after the tenants called the police on him. The Parties agreed that the Applicant had to have the police escort him into the house to obtain some of his possessions.

At the end of the hearing, the Applicant said that he has found a new place to live and that he does not need an order of possession for the rental unit in question. He said:

I need to be stamped by you guys that I was a tenant. I am going after them civilly and I need you guys to say that I was a tenant. I had to pay for storage again. . . my stuff was trashed by them. I'm taking them to court.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Policy Guideline 51, for expedited hearings, states the following:

### **Order of Possession for Tenant**

Under section 54 of the RTA and section 47 of MHPTA, a tenant may apply for an order of possession for the rental unit or home site if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit. Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another renter is occupying the rental unit. . . .

[emphasis added]

Section 12 of the *Residential Tenancy Act* Regulation states that a landlord must ensure that a tenancy agreement is in writing and is signed and dated by both the landlord and tenant.

Based on the evidence before me overall, I find that in this set of circumstances, the Applicant was never a “tenant” under the Act. While there were discussions with the Landlords and the other tenants about the Applicant becoming a tenant, I find that the Landlords never approved the Tenant’s application to be a tenant and they never signed a tenancy agreement. The Applicant may have wanted to be a tenant of the rental unit; however, the Landlords’ actions in not adding the Applicant to the tenancy agreement reveals their intentions in this regard. I find that the Parties never came to an implied or express agreement as to the Applicant’s tenancy in the rental unit; therefore, I find that a tenancy never existed in this situation.

The Applicant’s Application is dismissed wholly without leave to reapply. The Applicant is not awarded an order of possession, nor is he granted recovery of the \$100.00 Application filing fee.

### **Conclusion**

The Applicant is unsuccessful in his claim for an order of possession in the rental unit. I find that the circumstances described and agreed on by the Parties in the hearing do not amount to a tenancy under the Act. The Application is dismissed without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 20, 2020

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Residential Tenancy Branch