



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

The Applicant filed an Application for Dispute Resolution (the “Application”) on January 3, 2020 seeking an order of possession for the rental unit and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Act* (the “*Act*”) on March 3, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Preliminary Issue

On October 12, 2019, the Applicant served a Two Month Notice to End Tenancy for Landlord’s Use of Property, to the Respondent at the dispute address. The indicated date by which the Respondent must move out by is December 12, 2019.

The Notice of Dispute Resolution lists the Applicant as the landlord, and the Respondent as the tenant. The ownership of the unit – which is now that of the Applicant – is set forth in the Applicant’s Affidavit sworn on January 2, 2020. Ownership of the unit transferred from the Applicant’s aunt to the Applicant’s mother, by will and testament in September 2019. The Applicant’s mother “gifted” the unit to the Applicant in October 2019.

The Applicant testified that the Respondent has lived in the unit since 2007, in an arrangement with the Applicant’s mother who lived in the unit from 2005 to 2018. In the affidavit, the Applicant states: “[The Respondent] has not paid anything towards rent or utilities for the Unit since my mother vacated the Unit in September 2018.”

The Applicant's mother moved to a separate residence in September 2018. The Applicant, who lives out of province, is seeking an order of possession by way of section 49 of the *Act* to live in the unit and be closer to their mother in the same city.

In the hearing, the Applicant stated there is no tenancy agreement in place. Additionally, the Applicant's representative stated that "Technically, [the Applicant] was not the landlord until October 2019."

I have given this matter further deliberation after hearing the Applicant's testimony, reviewing the documentary evidence, and close consideration of the *Act*. I have also considered the Residential Tenancy Policy Guideline 9 'Tenancy Agreements and Licenses to Occupy'. This gives a statement of the policy intent of the legislation, specifically regarding the determination of whether a particular arrangement is a license to occupy or a tenancy.

I find the documentary evidence and oral testimony shows there is no tenancy agreement – no contract – between the Applicant and the Respondent. The section 1 definition of "tenancy agreement" includes a licence to occupy; however, in this situation there is no proof that the Respondent or "licensee" was given permission to use the unit. There was testimony that the relationship between the Applicant's mother and the Respondent was acrimonious; therefore, I find there is no evidence of permission or authorization, neither express nor implied. The Affidavit evidence is that "My mother and [the Respondent] no longer have a relationship". From this, I find there was no permission in place for the Respondent to occupy the unit.

Additionally, with no payment of rent, I cannot presume that a tenancy was created. Given the circumstances surrounding the occupation of the premises, I find the evidence weighs against finding that there is a tenancy.

I find in this situation, the ownership of the unit was transferred, and the previous owner (i.e., the Applicant's mother) had a roommate who is now the sole occupant. This is not a landlord and tenant relationship, and there are no contractual rights under the *Act*.

In short, the provisions of the *Act* do not apply to the situation at hand. Based on these facts and an application of the legislation, I do not have jurisdiction to hear this Application.

The Applicant is free to seek appropriate legal remedy in this matter.

The Applicant's representative in this matter submitted that section 67 of the *Act* may apply, with the Applicant having suffered damage and loss in this situation, by the Respondent's non-compliance with the *Act*. With no jurisdiction to hear this Application, I am unable to determine or order compensation.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. Since I do not have jurisdiction, I am unable to award recovery of the filing fee.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 4, 2020

Residential Tenancy Branch