



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing dealt with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

Both parties appeared or were represented at the hearing.

At the outset of the hearing, I confirmed that the tenant had been duly served with notification of the proceeding and the landlord's evidence. The landlord's documentation was admitted into evidence.

The tenant had submitted evidence to the Residential Tenancy Branch for this proceeding but had not served it upon the landlord. The tenant's evidence was not admitted; however, the tenant was informed that he would be given the opportunity to provide his evidence orally during the hearing.

As a preliminary issue, I determined it necessary to decide whether the living accommodation was exempt from the Act.

I heard the owner resides in the upper part of the house and the tenant occupies the lower level of the same house. In the landlord's affidavit, it states, in part, in paragraph 5.:

"The bathroom and living/dining room are in a shared space."

[My emphasis underlined]

Section 4(c) of the Act provides:

- 4 This Act does not apply to
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

Both parties were in agreement that the kitchen in the rental unit is for the tenant's exclusive use and the landlord does not use the same kitchen as the tenant.

The landlord testified that the tenant has exclusive use of the bathroom on the lower level and the landlord does not use that bathroom; however, the tenant must pass through common area to get to his bathroom. The tenant testified that he has exclusive use of the bathroom and the landlord does not use the same bathroom he does; but, he was of the position the area outside of the bathroom was part of his rental unit, for his exclusive use, and not common area.

In either scenario, I was satisfied the tenant and the owner of the property do not share the same kitchen or bathroom facilities and the Act applies to the living accommodation.

I proceeded to hear from the parties and after approximately 1.5 hours of hearing time the parties reached a mutual agreement in resolution of this dispute. I have recorded their agreement by way of this decision and the order that accompanies it.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

The parties mutually agreed upon the following terms in resolution of this dispute:

1. The tenant shall vacate and return possession of the rental unit to the landlord by 1:00 p.m. on July 11, 2020.
2. In exchange for agreeing to leave the unit by the date and time set out above, the tenant is authorized by the landlord to remove and take possession of a desk in the rental unit as his own property.

3. The parties, or their agents, shall meet at the property at 4:00 p.m. on July 12, 2020 for purposes of performing the move-out inspection.
4. This agreement is not a full and final settlement agreement and both parties are at liberty to pursue the other for monetary damages or losses they may have suffered due to the other party's breach of the Act, regulations or tenancy agreement, if any.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlord with an Order of Possession effective at 1:00 p.m. on July 11, 2020.

Conclusion

The parties reached a mutual agreement in resolution of this matter that I have recorded by way of this decision and the Order of Possession that accompanies it. The agreement reached during this hearing is not a full and final settlement agreement and the parties remain at liberty to file a monetary claim against the other by way of a future Application for Dispute Resolution.

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 09, 2020

Residential Tenancy Branch