



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Early end of the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Respondent did not attend the hearing. I accept the Landlord’s evidence that the Respondent was served with the application for dispute resolution, notice of hearing and evidence (the “Materials”) by posting the Materials on the door of the unit on September 14, 2020. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received on the 3rd day after it is posted. Given the evidence of posting the Materials I find that the Respondent is deemed to receive the Materials on September 17, 2020. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy of a whole house started by written agreement on June 1, 2015. The tenancy agreement does not list the Respondent as a tenant under the agreement and has never been a tenant of the Landlord. The tenancy of the house was ended for

September 1, 2020 by mutual agreement with one of the two named tenants on the written tenancy agreement. That tenant moved out of the house on September 1, 2020 and on that date the Landlord discovered a third person, the Respondent, living in the lower part of the house. The Respondent has refused to move out of the house.

Analysis

Section 58(1) of the Act provides that a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant.

Section 2(1) of the Act provides that this Act applies to tenancy agreements, rental units and other residential property. Section 1 of the Act defines a tenancy agreement as 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. Based on the Landlord's undisputed evidence that there is no tenancy agreement between the Respondent and the Landlord, I find that the Respondent is not a tenant as defined under the Act and that the Landlord may not have made the application as against the Respondent. This application is dismissed. However, as the tenancy of the house was mutually ended with an agreement between the Landlord and the tenant named in the tenancy agreement, the Landlord remains at liberty to make an application for an order of possession of the house naming its tenant as respondent. For information purposes I set the relevant section out below:

Section 55(2)(d) of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where the landlord and tenant have agreed in writing that the tenancy is ended.

Conclusion

The application is dismissed.

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: October 02, 2020

Residential Tenancy Branch