



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

The Applicant filed for dispute resolution under the *Residential Tenancy Act* (the “Act”) for an order of possession of the rental unit. Additionally, they applied for reimbursement of the application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) on October 5, 2020. In the conference all hearing I explained the process to the attending party and provided the opportunity to ask questions.

The Applicant stated they mailed the notice of this hearing and their prepared evidence statement to the Respondent by registered mail.

The Respondent did not attend or provide documentary evidence for this hearing. The hearing proceeded in that party’s absence.

Preliminary Issue - Jurisdiction

The Notice of Dispute Resolution shows the Applicant as the ‘tenant’, and the Respondent as the ‘landlord’ in this matter.

The Applicant, via their translator, explained that there is no formal documented tenancy agreement in place. In 2016 the Applicant built the house and put a family member as the owner of that property. The Applicant was not paying rent; rather, they stated there was a verbal agreement. This agreement is that the Applicant could live in the house – they spent all the money to buy the house, the furniture, and paid ongoing expenses for food and other necessary items. In exchange for this, the owner family member (here the Respondent) allowed the Applicant to live there.

A written statement from a younger family member of the Applicant provides that “[the Applicant] made various payments in respect of the resident, including food and daily household expenses, in exchange for being permitted to reside there.”

The Applicant explained their living arrangement within the house: they have their own bedroom with a bathroom, yet they share the kitchen and other common areas with the other members of the family under the same roof. The Applicant would prepare food and other items on a daily basis.

The Applicant applies for an order of possession due to the family member owner (the Respondent here) changing the locks on the house on July 17, 2020. This left the Applicant unable to enter the home. A statement from the Applicant's son provides detail on this. In the hearing, the Applicant provided that the police, upon visiting the home at the time of this incident, advised the Applicant to seek dispute resolution from this branch.

The *Act* sets out, in section 4, what it does *not* apply to. In subsection (c), this is: "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation."

Further, the *Act* section 1 contains definitions as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement,
 - or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

"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 license to occupy a rental unit.

From reviewing the evidence and considering the Applicant's submissions, I find the situation is not that of a residential tenancy.

My interpretation of the situation is that there is a provision of care – even loosely equating to the *Act* definition of "rent" with its delineation of "value" – in exchange for the right to stay in living accommodation. This is from the Applicant to the Respondent;

however, this does not create a tenancy, and the situation is not governed by a tenancy agreement.

I also consider the *Act* being plain in stating that it does not apply to an arrangement where the occupant shares a bathroom or kitchen with the owner.

Based on these facts, and an application of the legislation, I do not have jurisdiction to hear this Application.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, without leave to reapply. With this dismissal, the Applicant is not entitled to recovery of the filing fee.

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 5, 2020

Residential Tenancy Branch