



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The applicant applied for:

- an order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Notice), pursuant to sections 49 and 55 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing and had a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Both parties agreed they had a common law relationship, the applicant is the owner of the unit, they separated in 2011 and the respondent has been living in the unit since then. The applicant did not ask for rent and paid for the household expenses in lieu of child support. There was no tenancy agreement.

Sections 2(1) and 58 of the Act states:

2(1) Despite any other enactment but subject to section 4 [what this Act does not apply to], **this Act applies to tenancy agreements**, rental units and other residential property.

58(1) Except as restricted under this Act, **a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:**

- (a) **rights, obligations and prohibitions under this Act;**
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or

- (ii)relate to
 - (A)the tenant's use, occupation or maintenance of the rental unit,
or
 - (B)the use of common areas or services or facilities.

(emphasis added)

Residential Tenancy Branch Policy Guideline 9 states:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; **and**
- **the tenant pays a fixed amount for rent.**

(emphasis added)

Residential Tenancy Branch Policy Guideline 27 states:

Section 58 of the RTA and 51 of the MHPTA give the director exclusive jurisdiction to resolves disputes involving:

- the rights, obligations and prohibitions under those Acts
- the rights and obligations under the terms of a tenancy agreement that are required or prohibited under those Acts, or relate to
 - the tenant's use, occupation or maintenance of the rental unit or manufactured home site, or
 - other use of common areas or services or facilities.

Based on both parties testimony, I find there is no tenancy agreement between the parties.

Conclusion

In accordance with Section 58(1) of the Act, I find I have no jurisdiction to hear this matter.

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: October 16, 2020

Residential Tenancy Branch