



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 as a result of the Applicants' Application for Dispute Resolution, made on October 10, 2020 (the "Application"). The Applicants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on December 4, 2020 as a teleconference hearing. The Applicants attended the hearing at the appointed date and time. No one appeared for the Respondents. The conference call line remained open and was monitored for 18 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Applicants and I were the only persons who had called into this teleconference.

The Applicants testified the Application and documentary evidence package was served to the Respondents by registered mail on October 16, 2020. The Applicants provided a copy of the registered mail receipts in support. The Applicants stated that the above-mentioned documents were also served in person to each Respondent on November 13, 2020. The Applicants provided a proof of service in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Respondents are deemed to have been served with the Application and documentary evidence on October 21, 2020 by registered mail and on November 13, 2020 in person. The Respondents did not submit documentary evidence in response to the Application.

Preliminary Matters

The Applicants testified that they are the committee members who have been appointed to act on behalf of the registered owners of the property as they are in long term care. The Applicants stated that M.R. is the son of one of the registered owners, and has moved into the home, without permission and without a tenancy agreement. The

Applicants stated that the Respondent M.R. has not paid any deposits and paid no rent. The Applicant stated that M.R. has allowed the other occupants into the home without consent, and have been subject to frequent Police contact. The Applicants stated that there has been no tenancy established, therefore, the *Act* does not apply.

Section 2(1) of the Act states; 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.

Section 1 of the Act defines “tenancy” means the tenant’s right to possession of a rental unit under a tenancy agreement. “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 licence to occupy a rental unit;

According to the Residential Tenancy Policy Guideline 9; 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.

According to Section 62 of the Act;

(1) The director has authority to determine

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

(4) The director may dismiss all or part of an application for dispute resolution if

(a) there are no reasonable grounds for the application or part,

(b) **the application or part does not disclose a dispute that may be determined under this Part**, or

(c) the application or part is frivolous or an abuse of the dispute resolution process.

In this case, I find that there is no evidence to indicate that a tenancy agreement exists between the parties. I accept that the Respondents have no rights to possession of the property and that there is no written or oral, express or implied, agreement between the parties respecting possession of the home, use of common areas and services and facilities, and includes a licence to occupy a rental unit and pay no rent.

I find that the *Act* does not apply to the living arrangement and therefore I have no jurisdiction to hear the dispute. The Application for Dispute Resolution is dismissed without leave to reapply.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicant should seek legal advice from their lawyer as to how to resolve this dispute.

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: December 04, 2020

Residential Tenancy Branch