



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, OPU-DR, FFL

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent based on the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72..

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The respondent confirmed that on January 10, 2021, they received the 10 Day Notice that the applicant claimed to have posted on the door of this manufactured home on January 5, 2021. As such, I find that the respondent was duly served with this Notice in accordance with section 88 of the *Act*.

The applicant gave sworn testimony that they served the respondent with a copy of their dispute resolution hearing package by sending it by registered mail to the address of the manufactured home where the respondent has been residing on January 18, 2021. Although they did not provide a copy of the Canada Post Tracking Number or Customer Receipt for this registered mailing, they did provide details regarding the Tracking Number and date when this was sent from the Canada Post records they had received. The applicant said that this registered mail was returned to sender because the respondent had refused to accept this package.

The respondent testified that they did not receive notification of this hearing by registered mail and denied having refused delivery of this package. The respondent said that the applicant had rerouted mail delivery from the manufactured home to the location where the applicant was living, and for that reason they did not receive notification of the dispute resolution hearing by registered mail. However, they had received notification of the hearing from the Residential Tenancy Branch (the RTB), and were aware of the application to obtain possession of the rental unit based on the 10 Day Notice.

The parties agreed that they were aware of a second hearing scheduled for March 2, 2021, with respect to another application by the applicant for an early end to this tenancy. They were also aware of a third hearing scheduled for April 13, 2021, to consider the respondent's application to cancel the 10 Day Notice.

As there was conflicting testimony with respect to the service of the dispute resolution hearing package, I checked the Canada Post Online Tracking System to confirm the applicant's sworn testimony that they did send the hearing package to the respondent by registered mail on January 18, 2021. Since these records confirmed that the package was sent and returned to the applicant on January 22, 2021, and in accordance with sections 89 and 90 of the *Act*, I find that the respondent was deemed served with the dispute resolution hearing package on January 23, 2021, the fifth day after its registered mailing.

The only written evidence submitted for this hearing by either party was the applicant's provision of the first page of the 10 Day Notice, and a photo of that Notice posted on the door of the manufactured home.

Issues(s) to be Decided

Is the applicant entitled to an Order of Possession for unpaid rent? Is the applicant entitled to a monetary award for unpaid rent? Is the applicant entitled to recover the filing fee for this application from the respondent?

Background and Evidence

The applicant provided the following information on the Notice of Dispute Resolution Hearing, the only substantive written explanation of this application provided by the applicant:

I do not live there it only my mailing address I live at (Current Address of Applicant). (Address of manufactured home) this property is part of a separation agreement Im to take possession jan1,2021. Everything is in my name and legally belongs to me My ex wife's mom(S) lives there has never paid any rent or damage deposit or have any rental agreement And will not pay rent or move out please help ASAP

At the hearing, the applicant confirmed that they have no rental agreement with the respondent, that a figure for rent for these premises had never been established between the parties, and that neither a damage deposit nor any rent had ever been paid by the respondent for their use of these premises. The applicant maintained that the terms of a settlement agreement between the applicant and his wife (the daughter of the respondent) authorized by the Supreme Court of B.C. on October 22, 2020, and ordered by that Court on November 30, 2020, required the manufactured home to be granted to the applicant by January 1, 2021. As of that date, the applicant maintained that the respondent has been “squatting” on the premises without legal authorization to do so.

At the hearing, I asked the applicant to clarify how they arrived at the \$2,000.00 figure of the \$2,100.00 identified as the requested monetary award, when they also stated in their application and at the hearing that there was no tenancy agreement for this tenancy and no agreement as to the amount of the monthly rent. The applicant testified that they were informed by a representative of the Residential Tenancy Branch (the RTB) that they should identify a figure that the applicant believed was typical for a rental unit of that size in the vicinity of the manufactured home. They said that three bedroom homes were renting for \$2,000.00 per month in that area, and this formed the basis for their application for a monetary award, plus the recovery of their filing fee.

The respondent, through their advocate, maintained that the applicant and the applicant's wife (i.e., the respondent's daughter) had persuaded the respondent to enter into a rent to own agreement for the manufactured home a few years ago. The advocate claimed that the respondent had made a \$20,000.00 downpayment on the purchase of the manufactured home, and had been making regular monthly payments of \$500.00 from November 2018 until June 2019. In July 2019, when the marriage between the respondent's daughter and the application broke down, the advocate maintained that the respondent commenced paying \$375.00 in pad rental to the owner of the manufactured home park.

The applicant did not dispute the claim that the respondent and not the applicant has been paying the pad rental for this manufactured home to the owner of the

manufactured home park since July 2019. They did dispute the claim that the respondent had entered into a rent to own agreement with respect to this manufactured home.

I also report the following discussions which emerged during this hearing.

1. Both parties agreed that the respondent will surrender vacant possession of the premises identified in the application to the applicant by 1:00 p.m. on March 15, 2021.
2. The applicant agreed to refrain from sending the respondent any text messages or other electronic communications until the respondent has vacated the premises by March 15, 2021.
3. Both parties agreed that the above terms would constitute a final and binding resolution of this application and that they did so of their own free will.

Analysis

Despite the parties expressed willingness to settle this matter on the terms outlined above, unfortunately I find myself in no position to issue any orders with respect to this matter. This is because, based on the evidence presented by both parties attending this hearing, I decline jurisdiction to hear this application as I do not find that it falls within the *Residential Tenancy Act*. By the applicant's written and oral admission, there has never been a tenancy agreement established with the respondent. In fact, the applicant was adamant that no contract of any type has been established with the respondent.

The respondent's advocate maintained that there was some type of contract established whereby the respondent entered into a rent-to-own agreement; however, they provided no documentation to support their assertion that this was so. They also provided no written documentation to support their assertion that a sizeable downpayment was made by the respondent, followed by additional monthly payments. If this information were correct, an assertion which I note the applicant denied, the contractual relationship between the applicant and the respondent would not be one that would be a landlord-tenant relationship that falls within the jurisdiction of the *Act*.

Under such circumstances, I find that the applicant cannot take action against the respondent using any of the legal provisions established by the *Act*.

Conclusion

I decline to hear this matter and issue no Order of Possession to give effect to the settlement reached between the parties during this hearing as I have no jurisdiction to consider this application.

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: March 01, 2021

Residential Tenancy Branch