



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FFL

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (“the Act”) for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

While the applicant DW attended the hearing by way of conference call, the respondent did not. I waited until 11:16 a.m. to enable the respondent to participate in this scheduled hearing for 11:00 am. The applicant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 applicant and I were the only ones who had called into this teleconference.

The applicant testified that the respondent was served with the application package by way of registered mail on February 19, 2021. The applicant included the tracking information in their evidentiary materials.. In accordance with sections 88 and 89 of the *Act*, I find the respondent deemed served with the package 5 days after mailing.

Preliminary Issue: Do I Have Jurisdiction to Decide This Matter?

DW testified that they were the appointed power of attorney for WH. DW submitted a copy of the document confirming this. DW testified that the tenant was a person named CP, who had moved out in October 2020. The monthly rent was set at \$800.00, payable on the first of the month for the garage suite.

DW testified that CP had allowed the respondent NB to move in, and NB has remained in the garage suite without paying DW any rent. DW served NB with a 10 Day Notice to End Tenancy for Unpaid rent on January 18, 2021. DW testified that the tenancy had ended when CP moved out, and that the respondent is refusing to vacate despite the fact that the tenancy had ended. DW testified that the respondent has “gone hostile”, and has refused to vacate the suite.

RTB Policy Guideline #13 states the following:

“H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

By the above definition the respondent in this dispute cannot be considered a “tenant”, but an occupant, as the respondent was never named in the tenancy agreement, nor has the respondent provided contrasting evidence to support that he is in fact a tenant.

I am unable to consider the application as I find that there is no tenancy agreement between the parties. The respondent is an occupant and not a tenant under the definition of section 1 of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupant as a tenant. As I am not satisfied that the landlord agreed to include NB as a tenant in the tenancy agreement, the *Act* does not apply to their relationship. On this basis, I cannot consider this application as I have no jurisdiction in this matter.

Conclusion

I find that NB is not considered a tenant, but an occupant in this matter. Accordingly, I decline to hear this matter as I have no jurisdiction to consider the 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: May 11, 2021

Residential Tenancy Branch