



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

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

- an Order of Possession of the rental unit pursuant to section 54.

BK appeared for the landlord in this hearing. The applicant appeared with his agent AN. 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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The respondent confirmed receipt of the application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the respondent duly served with the application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Preliminary Matter: Does the Residential Tenancy Branch have jurisdiction to hear the dispute between the parties?

Both parties confirmed in the hearing that the named tenant is GO, and is now deceased. The applicant in this matter is the son of the named tenant.

The applicant and their agent confirmed that they no longer have access to the rental unit as the landlord had changed the locks in April of 2021. Both parties confirmed that the unit remains unoccupied and that some of the tenant's belongings remain in the rental unit. The applicant and their agent testified that the applicant is the only living

relative of the tenant. The applicant wishes to have access to the rental unit in order to retrieve and sell their father's belongings.

Analysis

The definitions of a "tenancy", "tenant", and "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"tenancy" means a 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;

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

I find that the named respondent in this dispute is not a tenant as defined by the *Act*. Although it was confirmed by both parties that the named tenant in this tenancy is now deceased, I find that the applicant in this matter has not provided sufficient evidence or documentation to demonstrate that they have authority to act as the executor or trustee of the estate for the deceased tenant.

I am unable to consider this application as I find that there is no tenancy agreement between the applicant and the landlord. The applicant is not a tenant under the definition of section 1 of the *Act*, nor am I satisfied that the applicant has the authority to act as trustee of the estate of the deceased tenant. On this basis, I cannot consider the application under section 54 of the *Act* for an Order of Possession as I have no jurisdiction to hear this matter.

The landlord's agent testified that they were open to discussing an arrangement with the applicant in order for the applicant to deal with his father's belongings. During the hearing the parties discussed the issues between them, and agreed to following mutual resolution, which I have recorded below:

1. The landlord agreed that the applicant may have access to the rental unit between 9:00 a.m. and 5:00 p.m. between Monday, May 31, 2021 and Friday, June 4, 2021, specifically and only for the purposes of retrieving his father's belongings.
2. Both parties that the applicant would be provided access by the caretaker or representative of the landlord for the purpose described in condition #1.
3. Both parties agreed that the applicant is bound by the rules in the building while accessing the rental unit.

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 27, 2021

Residential Tenancy Branch