



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Yale Manor Ltd and [tenant name
suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, FFL

Introduction

This hearing was reconvened from the direct request proceedings in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and the Respondent’s representative were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The Parties were under a written tenancy agreement that started March 1, 2018. Rent of \$700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$350.00 as a security deposit. The Respondent has been deceased since November 6, 2021.

The Landlord states that the Respondent’s adult child (“KB”), who had been living with the Respondent at the time of death, took over the tenancy with the Landlord collecting

rent of \$700.00 from KB on December 1, 2020 and thereafter. The Landlord and KB agree that rent is payable on the first day of each month. No written tenancy agreement was given to KB for signature. The Tenant failed to pay rent for May 2021 and on May 27, 2021 the Landlord posted a 10-day notice to end tenancy for unpaid rent (the "Notice") on the door of the unit. The Notice does not name KB as the tenant. The Landlord did not name KB as a Respondent in the application.

Analysis

Section 44(1)(e) of the Act provides that a tenancy ends where the tenancy agreement is frustrated. Frustration occurs when there is a change in circumstances that totally affects the tenancy to the point where the tenancy becomes incapable of being performed. Based on the undisputed evidence that the Respondent died on November 6, 2020 and as KB was not a tenant named on the tenancy agreement, I find that the tenancy between the Landlord and the Respondent was incapable of being performed and became frustrated following the death of the Respondent.

Section 2(2) of the Act provides that the Act applies to a tenancy agreement. Section 1 of the Act defines a tenancy agreement as including an oral agreement. Based on Landlord's evidence that KB took over the tenancy of the unit and the undisputed evidence that rents were paid for the unit by KB starting December 1, 2021 and thereafter, I find that KB and the Landlord entered into an oral tenancy agreement for the unit starting December 1, 2020. As the tenancy between the Landlord and the Respondent ended and as there is no evidence that any rental monies were owed by the Respondent prior to KB taking over the unit under the separate tenancy agreement, I find that the Landlord has no basis for making its application against the Respondent in relation to the dispute between the Landlord and KB. For these reasons I dismiss the Landlord's application. The Landlord remains at liberty to make an application in relation to any dispute between the Landlord and KB.

Conclusion

The Landlord's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 17, 2021

Residential Tenancy Branch