



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST FOUNDATION SOCIETY
(1974) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

On August 10, 2021, the Applicant submitted an Application for Dispute Resolution under Section 54 of the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit. The matter was set for an expedited participatory hearing via conference call.

The Applicant, the Applicant’s Advocate and the Respondent attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Preliminary Matter – Service of Evidence

The Respondent acknowledged receipt of the Applicant’s documentary evidence and raised no concerns regarding the service method or service timelines. As a result, I have accepted this documentary evidence for consideration.

The Applicant stated that they did not receive any evidence from the Respondent and the Respondent was unable to provide the details of their service attempts to the Applicant. As such, I find that the Respondent failed to provide sufficient evidence that they served their evidence package in accordance with the Act. As such, I find the Respondent’s evidence is inadmissible for this hearing.

During the hearing, the Applicant did consent to the Respondent referencing the Program Agreement (submitted by the Respondent). The Program Agreement was presented during the hearing when the parties were attempting to establish whether the Residential Tenancy Branch has jurisdiction over this matter, and to determine if there was a tenancy established between the Respondent and the Applicant.

Issues to be Decided

Section 54(1) of the Act authorizes a tenant, who has entered into a tenancy agreement with a landlord to request an order of possession of the rental unit by making an application for dispute resolution.

In this case, the Applicant has made an Application for an Order of Possession under section 54 of the Act. In order to determine if an Order of Possession for the rental unit should be granted to the Applicant; it must firstly be established that there is a tenancy in place, as defined by the Act.

I will be considering if the Act applies to the living accommodations related to this matter and if so, whether there has been a tenancy established.

If I find that there is a tenancy and the Act applies, I will consider whether the Applicant should receive an Order of Possession for the rental unit, in accordance with section 54 of the Act.

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following:

- There is no written document referred to as a Tenancy Agreement.
- The Applicant pays a monthly rent of \$375.00.
- The Respondent did not collect a security deposit.
- The Respondent lives in a facility that provides living accommodations, hospitality support services, and support programs.
- The Respondent signed a Program Agreement on January 6, 2021.

The Respondent submitted a copy of the Program Agreement that documented the following:

- The intent of the facility is to provide temporary housing until the client is able to move to housing that is more independent.
- The types of programs and support services provided.
- That a minimum of two meals a day would be provided.
- That the monthly rent of \$375.00 is due on the first of the month.
- The terms regarding program participant safety.

- The terms regarding rent, home amenities and support.
- The terms regarding ending this agreement that included circumstances where the agreement could be ended by the Respondent in less than 24 hours written notice, 48 hours written notice, ten days written notice and 30 days written notice.
- The terms when the Applicant could end the agreement; 30 days written notice.
- The signature of the Applicant on January 6, 2021 and a signature of a staff member on January 6, 2021.

The Respondent pointed out that the Program Agreement states that it does not fall under the *Residential Tenancy Act*. The Respondent confirmed that they are working under the auspices of the *Community Care and Assisted Living Act* and were registered with the Assisted Living Registry. The Respondent was unable to provide supporting documents to confirm this statement.

The Applicant's Advocate ("CB") testified that the Applicant has been locked out of his living accommodations and has since been homeless.

The Tenant stated that he moved into the facility in September 2019 and signed a similar Program Agreement at that time.

CB stated that the Applicant has not had access to his belongings as the Respondent is misinterpreting a Provincial Undertaking ordering the Applicant not to go to the second floor or common areas of the facility/living accommodations.

CB acknowledged that if an Order of Possession was granted to the Applicant, that this could place the Applicant in criminal breach if he attended the facility.

Analysis

I acknowledge that the Applicant applied for dispute resolution to request an Order of Possession and may not have been prepared to provide evidence regarding whether the *Residential Tenancy Act* applies to this matter.

Section 4(f) of the Act states that the Act does not apply to living accommodations provided for emergency shelter or transitional housing. Section 4(g) of the Act states that the Act does not apply to a living accommodation in a community care facility under the *Community Care and Assisted Living Act* or in a housing-based health facility that provides hospitality support services and personal health care.

In this case, I find that the Respondent provided conflicting testimony and evidence that did not assist in determining if the accommodations that have previously been provided to the Applicant fall under transitional housing, the *Community Care and Assisted Living Act* or if the facility is considered a housing-based facility that provides hospitality support services and personal health care.

I acknowledge that the Applicant was placed in a difficult position when they were left without access to their living accommodations; however, I find that the Applicant has failed to provide sufficient evidence that the living accommodations in this matter would fall under the *Residential Tenancy Act*.

Before I can make a decision regarding the Applicant's request for an Order of Possession, it must be clear that I have jurisdiction over the matter. In this case, I find that jurisdiction is still unclear. Therefore, I dismiss the Applicant's application with leave to reapply once jurisdiction is determined.

As referenced during the hearing and for the benefit of both parties, section 5 of the Act states that landlords and tenants cannot avoid or contract out of the Act or Regulations. Although a determination has not been made in regard to the Respondent's living accommodations, note that any policies put in place by supportive housing providers must be consistent with the Act and Regulations.

Conclusion

The Applicant's Application for Dispute Resolution has been dismissed with leave to reapply as jurisdiction over this matter was not established.

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: September 09, 2021

Residential Tenancy Branch