



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR

Introduction

This hearing convened as a result of the applicants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the applicant; and
- a monetary order for unpaid rent;

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated June 3, 2021, which should be read in conjunction with this decision.

At the participatory hearing, the applicant HG attended the teleconference hearing. The respondent did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The applicant testified that the respondent was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on June 9, 2021. The applicant provided the tracking number as proof of service, which is located on the style of cause page of this decision.

Based on the applicant's undisputed testimony and evidence, I accept that the respondent was sufficiently served under the Act and the hearing proceeded in the respondent's absence.

During the hearing the applicant was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the Residential Tenancy Act so that I have authority to resolve this dispute?
2. If so, is the applicant entitled to a cancellation of the Notice, and an order of possession of the rental unit?

Background and Evidence

The evidence shows that a tenancy formed between the applicants and another party, GD. Filed into evidence was a written tenancy agreement between the applicant and GD, for an effective start date of November 16, 2016.

The applicant states that GD allowed four other people to move into the rental unit and charged them rent. The applicant states that he did not know about this arrangement, as he thought they were family members of GD.

The applicant states that in December 2020, he was made aware that GD had passed away, leaving the four occupants. Since that time, according to the landlord, the four occupants have remained in the rental unit and have not paid any rent.

As the applicant was not sure how he could have the occupants removed, he served each one with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice). In this case, the applicant served the respondent with the Notice on April 3, 2021, by personal service.

None of the occupants have disputed the Notice, paid monthly rent, or vacated the rental unit. The applicant said that one of the four occupants told him they were vacating the rental unit at the end of this month.

The applicant seeks an order of possession of the rental unit. The applicant abandoned his request for a monetary order.

During the hearing, the applicant mentioned another hearing he had on September 23, 2021, regarding the same issues with another occupant of the rental unit, AK. The applicant had filed for dispute resolution under the Direct Process, which was adjourned to a participatory hearing. That hearing was heard on September 23, 2021, before another arbitrator.

On September 23, 2021, another arbitrator granted the applicant an order of possession of the rental unit in the applicant's application for dispute resolution, ordering that particular tenant, AK, and any guest or other person occupying the rental unit to deliver full and peaceable vacant possession and occupation of the rental unit to the applicant here, in two (2) days.

Analysis

Section 6 of the Act authorizes me to resolve disputes between landlords and tenants.

In order for me to hear this dispute, the applicant must show that the Residential Tenancy Act applies.

Residential Tenancy Policy Guideline 27 states that the Residential Tenancy Branch does not have the authority to hear all disputes regarding every type of relationship between two or more parties. The jurisdiction conferred by the Legislation is over landlords and tenants.

In determining whether there is a tenancy, Tenancy Policy Guideline 9 provides information. A tenancy agreement under the Act is 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.

Factors to consider are a fixed monthly rent payment and a payment of a security deposit.

In this case, I find that there is no evidence before me that a tenancy agreement existed between the parties. The applicant did not know the respondent when he became aware that his original tenant passed away and the respondent has never paid rent or a security deposit.

I therefore find the respondent had no legal right under the Act to live in the rental unit and I find that the respondent is an occupant, with no rights under the Act regarding this rental unit. The occupant can be removed by law enforcement at any time.

Further, the applicant was granted an order of possession of the rental unit, on September 23, 2021, which included anyone living in the rental unit.

As a result of the above, I find I do not have authority to resolve this dispute and, as a result, I dismiss the application for dispute resolution.

The applicant may seek remedy with the proper legal authorities or choose to enforce his order of possession of the rental unit through the proper channels.

Conclusion

I do not find the Residential Tenancy Act applies to this dispute and I have declined jurisdiction.

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 24, 2021

Residential Tenancy Branch