



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOUBLE D INN (AKA: DD INN) and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for an order of possession under the Act.

An advocate for the tenant, MN-S (advocate) attended the teleconference hearing. The hearing process was explained to the advocate and the advocate was given an opportunity to ask questions about the hearing process. Thereafter the advocate gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Proceeding dated November 7, 2021 (Notice of Hearing), application and documentary evidence was considered. The advocate testified that the Notice of Hearing, application and documentary evidence (Package) was served on the landlord via registered mail on November 10, 2021. A registered mail tracking number was provided and has been included on the style of cause for ease of reference. According to the Canada Post online registered mail tracking website, the Package was served on the landlord by registered mail on November 10, 2021 and was successfully delivered on December 7, 2021. Given the undisputed evidence before me, I find the landlord was sufficient served as of December 7, 2021, which is the date the landlord was served via registered mail.

Preliminary and Procedural Matter

The advocate confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them. As no email address for the landlord was provided, the decision will be sent via regular mail to the landlord.

Issue to be Decided

- Is the tenant entitled to an order of possession for the rental unit under the Act?

Background and Evidence

There is no tenancy agreement, only a shelter information form submitted in evidence. The advocate testified that they were unsure when the tenancy began. The tenant was asked if they were aware if the rental unit had been rented to another tenant. The advocate responded by stating that they believe that the rental unit has been re-rented to another tenant since the landlord locked the tenant out of the rental unit.

The landlord was not present at the hearing to confirm whether the rental unit was re-rented to a new tenant since this application was filed on November 30, 2021.

Analysis

Based on the testimony of the advocate and the documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, section 54 of the Act applies and states:

Order of possession for the tenant

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

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

In addition, I am unable to issue an order of possession under the Act where a formerly tenanted rental unit has been re-rented to a new tenant who is occupying the rental unit. In the matter before me, the advocate testified that they believe the rental unit has been re-rented to a new tenant since the application was filed.

As a result, I dismiss the tenant's application for an order of possession as I find that the evidence before me supports that a new tenant occupies the rental unit. As a result, I find the only remedy for the tenant is to seek monetary compensation for what the advocate describes is the landlord locking the tenant out of the rental unit and re-renting the unit to a new tenant.

Conclusion

The tenant's application is dismissed as I am satisfied that the rental unit has been re-rented to a new tenant since the application was filed.

As the filing fee was waived it is not granted.

This decision will be emailed to the tenant via their advocate and sent by regular mail to the landlord.

The tenant is at liberty to apply for monetary compensation if they so choose.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 30, 2021

Residential Tenancy Branch