



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the application for Dispute Resolution filed under the *Residential Tenancy Act* (the “*Act*”) on July 8, 2021. The Applicant applied for a monetary order for compensation related to a Notice to End Tenancy, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Applicant and the Applicant’s father (the “Applicant”) attended the hearing and were each affirmed to be truthful in their testimony. As the Respondent did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Applicant testified that the Respondent had been served the Application for Dispute Resolution and Notice of Hearing documents by Canada Post Registered mail, sent on July 23, 2021, and provided a tracking number for the mailing. Therefore, I find that the Respondent had been duly served in accordance with sections 89 and 90 of the *Act*.

The Applicant was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

Issues to be Decided

- Is the Applicant entitled to monetary compensation from the Respondent related to a Notice to End Tenancy?
- Is the Applicant entitled to the return for their filing fee for this application?

Background and Evidence

The Applicant testified that they had several conversations through a social media chat site with the Respondent between May 27, 2021, to June 22, 2021, where they agreed to rent the Respondent's property. The Applicant submitted 12 screenshots of their social media chat with the Respondent into documentary evidence.

The Applicant testified that they had an agreement to rent the property between July 1, 2021, to August 15, 2021, but that on June 22, 2021, the Respondent messaged them, telling them that they had decided to rent to some else.

When asked, the Applicant confirmed that they had not signed a tenancy agreement with the Respondent, that they had not paid the Respondent any money towards this rental, nor had they taken possession of the rental property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Applicant that there was no signed tenancy agreement between these parties for the rental unit, that no money was exchanged between these parties and that at no time was the Applicant in possession of the rental unit.

Section 13 of the Act states the following regarding tenancy agreements:

“Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.”

I have reviewed all of the documentary evidence submitted by the Applicant, and although I find that there is evidence to show that the parties to this dispute were involved in a conversation regarding renting a property between July 1, 2021, to August 15, 2021, I find that there was no signed tenancy agreement between these parties, as required by the *Act*.

The Residential Tenancy Branch policy guide number nine, Tenancy Agreements and Licences to Occupy, provides further guidance stating the following:

“B. TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord’s right to access the site, for a term; and
- the tenant pays a fixed amount for rent.”

As the Applicant did not take possession of the rental unit, nor did they pay any money to the Respondent for the rent for this rental unit, I find that there is insufficient evidence before to prove that a residential tenancy agreement existed between these parties.

Consequently, I must dismiss the Applicant’s application for a monetary order for compensation, as the applicant has failed to prove a residential tenancy agreement exists between them and the Respondent.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Respondent was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee.

Conclusion

I dismiss the Applicants claim in its entirety.

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: January 26, 2022

Residential Tenancy Branch