



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

The Applicant filed for an expedited dispute resolution hearing under the *Residential Tenancy Act* (the “Act”) seeking an order of possession for the rental unit, and recovery of the cost of the filing fee. The Director of the Residential Tenancy Branch has established the expedited hearing process for circumstances involving a tenant allegedly being denied access to their rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 18, 2022. I explained the process and the parties affirmed an oath to state their oral testimony was the truth from each of their perspectives. Each party confirmed they received written documentary evidence and submissions from the other prior to the scheduled hearing date.

Issues to be Decided

Does the Applicant have a legal right to possess the rental unit, pursuant to s. 54 of the *Act*?

Is the Applicant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Neither party produced a written tenancy agreement as evidence in this matter. The Landlord described the start of the occupancy of their basement in their home by the Applicant here. It started as a charitable arrangement in 2016, when they agreed to let the Applicant stay in one room in their basement suite until the Applicant could find a place to live. There was an amount agreed upon for the Applicant to do so. When another occupant moved out from one of the other basement bedrooms, the Applicant “took over the whole basement suite.” The Respondent refused to accept rent from the Applicant who has stayed there for almost one year rent-free.

The matter of evicting the Applicant was the subject of a BC Supreme Court action. In the hearing, both parties described the nature of the living arrangement; however, neither party could clearly articulate what the judge’s ruling in the matter was. They both described contact with the Residential Tenancy Branch in the past to discuss the matter.

The Respondent’s position is that this is not a tenancy because there is a shared kitchen and bathroom in the basement that they also share with the Applicant. The Applicant feel this is a tenancy because there was a verbal rental agreement. Both parties described that the Applicant had moved in to the basement in 2016. More recently the Respondent became fearful with direct threats from the Applicant.

The Applicant described having their items and personal property removed from the basement on January 22, 2022. Their belongings are in a storage container within the immediate area of the Respondent’s home, and the Applicant has been staying in different hotels since they were locked out on that same day. The Respondent feels this was a justified move because the *Act* does not apply in this situation.

Though the Respondent tried to end the tenancy by issuing Notices to End Tenancy over the past few months, at the same time they assert this is not a matter of a tenancy and the Residential Tenancy Branch does not have jurisdiction because it is not a landlord-tenant relationship where the parties share kitchen and bathroom areas in the home. They presented that the *Act* s. 4(c) excludes this type of relationship from the jurisdiction of the *Act*.

Analysis

The *Act* provides that “tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement. A “tenancy agreement” 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 license to occupy a rental unit.

The *Act* s. 54 provides that a tenant may apply for an order of possession for the rental unit if they have a tenancy agreement with the landlord. If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and the landlord.

In this matter, the Applicant did not prove that an agreement exists. They did not provide basic information on their Application for Dispute Resolution. The *Act* is specific that “tenancy agreement” does include a license to occupy. The *Residential Tenancy Policy Guideline #9*, that setting out the policy intent of the legislation in regard to tenancy agreements and licenses to occupy, defines “license to occupy” as “a person is given permission to use a rental unit or site, but that permission may be revoked at any time.”

I find there is no tenancy agreement between the parties, and there is no license to occupy on the basis that there was no agreement from the Respondent to allow the Applicant to use the rental unit. While the Applicant attempted to show there was an agreement between the parties, I find that is not the case. There is no contract, and no proof that the Applicant had permission from the Respondent to use the rental unit.

I cannot presume that a tenancy was created and there is not enough evidence from the Applicant to show that as fact. In sum, because the Applicant did not show evidence of a tenancy agreement, they are not entitled to an order of possession of the rental unit. The *Act* gives me the authority to order the repayment of a fee for an Application for dispute resolution. The Applicant was not successful; therefore, I make no such order here.

Conclusion

I dismiss this application for an order of possession, with leave to reapply.

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

Dated: February 18, 2022

Residential Tenancy Branch