



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-PP, OPB, MNRL, FFL, CNR, DRI

Introduction

This hearing was set to deal with cross applications. The landlord applied for an Order of Possession and Monetary Order due to unpaid rent. The tenant applied for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and to dispute a rent increase.

The landlord, his agent, and his translator appeared for the hearing. The tenant did not appear at the hearing; however, the tenant's spouse and occupant of the rental unit appeared and stated she was representing the tenant as the tenant had to work. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing materials upon each other. The landlord's agent testified the landlord's proceeding package and evidence were given to the tenant in person and posted to the door on October 15, 2021. The tenant's representative confirmed receipt of the landlord's package.

As for the tenant's proceeding package and evidence, the tenant's representative stated she was uncertain as to whether it was served to the landlord. The landlord's agent stated that a package was not received from the tenant. As such, I was unsatisfied the tenant served his proceeding package to the landlord and I dismissed it due to lack of proof of service. I informed that parties that I would proceed to hear the matter concerning unpaid rent and the landlord's entitlement to regain possession of the rental unit under the landlord's application. Neither party had any objections.

In reviewing the materials for this proceeding, I determined it necessary to explore whether the parties have a tenancy agreement to which the Residential Tenancy Act

("the Act") applies. The subject property is a hotel but the tenant has been occupying the subject room at the property since June 2021. Under the Act, a tenancy includes living accommodation where a license to occupy is given. As such, a tenancy may form for a hotel room; however, the Act also exempts certain living accommodation from falling under the Act, including living accommodation that is occupied as vacation or travel accommodation or provided for emergency shelter or transitional housing.

The tenant's representative was of the position that the parties have a tenancy to which the Act applies. The landlord's position was inconsistent at times. From the landlord's perspective the rental arrangement started out as a short term stay consistent with a hotel keeper renting a room to a hotel guest for a temporary stay; however, the landlord ultimately conceded that given the duration of the tenant's occupation in the subject unit that there is a reasonable likelihood that a tenancy eventually formed. The landlord was willing to consider the agreement between the parties to be a tenancy to which the Act applies.

Since a finding of a tenancy is beneficial to tenants, as it affords certain protections and rights not provided under the Hotel Keepers Act, I accepted jurisdiction to resolve the dispute between the parties.

During the hearing, the parties provided different version of events as to when the tenant took possession of the rental unit and the amount of rent payable and the documentary evidence before me was scant. Nevertheless, the parties indicated a willingness to find resolution by way of a mutual agreement. I was able to facilitate a mutual agreement and I have recorded it by way of this decision.

On another procedural matter, the landlord's application was amended to name the landlord as the owner of the property, with consent.

Issue(s) to be Decided

What are the terms mutually agreed upon during the hearing?

Background and Evidence

The parties mutually agreed upon the following terms during the hearing:

1. The tenant shall be permitted occupancy the rental unit until 6:00 p.m. on February 28, 2022 at which time the tenant must return vacant possession to the landlord. The landlord shall be provided an Order of Possession reflecting this agreement.
2. The tenant shall leave the rental unit undamaged and clean.
3. The landlord is authorized to retain any deposit collected from the tenant or the tenant's representative, to be applied toward any outstanding rent.

Both parties indicated they were in agreement with the above terms.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlord with an Order of Possession effective at 6:00 p.m. on February 28, 2022.

I also authorize the landlord to retain any deposit collected from the tenant or tenant's representative.

The parties did not reach any mutual agreement with respect to the amount of unpaid rent or recovery of unpaid rent and I do not issue a Monetary Order to the landlord. Rather, I dismiss that remedy with leave to reapply.

Conclusion

The parties reached a mutual agreement during the hearing that I have recorded by way of this decision. In recognition of the mutual agreement, I provide the landlord with an Order of Possession effective at 6:00 p.m. on February 28, 2022.

The landlord has authorization to retain any deposit collected from the tenant or the tenant's representative and the landlord has leave to reapply if the landlord seeks a Monetary Order for unpaid rent.

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: February 18, 2022

Residential Tenancy Branch