



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RR, PSF, RPP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Applicant under the *Residential Tenancy Act* (the Act) on March 18, 2022, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An Order for the Respondent to comply with the Act, regulations, or tenancy agreement;
- A rent reduction;
- An Order for the Respondent to complete repairs; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 AM on June 6, 2022, and was attended by the Respondent, who provided affirmed testimony. No one appeared on behalf of the Applicant. The Respondent was given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Respondent was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Respondent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Respondent was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent(s) must be served with a copy of the Application, the Notice of Hearing, and the documentary evidence to be relied on by the applicant at the hearing. Although the Respondent stated that they never received anything from the Applicant regarding this dispute, they received a courtesy copy of the Notice of Dispute Resolution Proceeding (NODRP) from the Residential Tenancy Branch (the Branch), which is why they have appeared, and that they wished to proceed with the hearing in order to obtain an Order of Possession under section 55(1) of the *Act* and a Monetary Order for unpaid rent under section 55(1.1) of the *Act*.

Although the Respondent stated that they were not served with the NODRP as required by Section 59(3) of the *Act* or rule 3.1 of the Rules of Procedure, they stated that they none the less received a copy from the Branch with sufficient time to review it, serve and submit documentary evidence, and attend the hearing, and as a result, they wished for the hearing to proceed as scheduled. As a result, I therefore find that the NODRP was sufficiently served on the Respondent for the purposes of section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure, pursuant to sections 71(2)(b) and (c) of the *Act*. The hearing therefore proceeded as scheduled, despite the absence of the Applicant, pursuant to rules 7.1 and 7.3 of the Rules of Procedure.

At the request of the Respondent, a copy of the decision and any Orders issued in their favor will be e-mailed to them at the e-mail address provided in the Application and confirmed at the hearing.

Preliminary Matters

At the outset of the hearing, I advised the Respondent that there was not a tenancy agreement before me for consideration and inquired about the terms of the tenancy. The Respondent stated that they are the landlord and that the Applicant, who is their adult child, is the tenant. The Respondent stated that the Applicant has resided in the property, which was originally owned by the Respondent's late spouse, since the summer of 2011. The Respondent stated that after their spouse passed away, they inherited the property in which the Applicant resides. The Respondent stated that at the time their spouse passed away, the Applicant already resided in the property.

Although the Respondent insisted that a verbal tenancy agreement existed, when I inquired about the terms of this agreement, the Respondent stated that their late spouse had co-signed a \$30,000.00 loan with the Applicant so that the Applicant could

purchase a sailboat, and that the Applicant had not been making the minimum \$400.00 per month loan payments as agreed upon. The Respondent stated that as a result, they told the Applicant in January of 2022 that since they were not making the loan payments, they would now owe \$2,000.00 per month in rent to reside in the property. The Respondent stated that the Applicant did not agree to this as they said that they would only be able to afford \$1,300.00 per month, and that no rent was ever paid by the Applicant to the Respondent or their late spouse. Although the Respondent stated that the Applicant made a \$1,300.00 payment on April 28, 2022, and another \$1,300.00 payment on May 31, 2022, when I inquired about the nature of these payments, the Respondent stated that they were payments made directly by the Applicant to the bank for the boat loan.

Based on the affirmed testimony of the Respondent, I am satisfied that no rent was due under a tenancy agreement at any point since the Applicant occupied the rental unit, and that it was not until January of 2022 when a dispute arose between the Applicant and the Respondent regarding the Respondent's continual refusal or inability to make the minimum monthly payments required for a boat loan co-signed by the Respondent's late spouse, and unrelated to the Applicant's occupancy of the property which is the subject of this dispute, that the Respondent demanded that the Applicant begin paying rent to continue residing in the property. However, by the Respondent's own admission, an agreement on the amount due was never reached between themselves and the Applicant, who had already been residing in the property since the summer of 2011, and the only payments ever made by the Applicant were payments directly to the bank for the boat loan, not payments to the Respondent or their late spouse for the purpose of rent or occupancy of the property.

Based on the above, I am not satisfied that a tenancy under the *Act* exists between the parties and I find that it is more likely than not that the Applicant began residing in the property in 2011 because the previous owner of the property, the Respondent's late spouse, had a family relationship with the Applicant, who is their adult child, and that occupancy of the property was given because of generosity rather than business consideration. I am also satisfied that the Respondent wishes to enforce payment of a boat loan, rather than the payment of rent under a tenancy agreement or license to occupy. I therefore find that the *Act* does not apply, and I dismiss the Application in its entirety, without leave to reapply for lack of jurisdiction. For the same reasons I also decline to grant the Respondent an Order of Possession under section 55(1) of the *Act* or an Order requiring the payment of rent under section 55(1.1) of the *Act*.

Conclusion

I dismiss the Application in its entirety, without leave to reapply for lack of jurisdiction. For the same reasons, I also decline to grant the Respondent an Order of Possession under section 55(1) of the *Act* or an Order requiring the payment of rent under section 55(1.1) of the *Act*.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the fact that this decision was issued more than 30 days after the close of the proceedings.

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: July 21, 2022

Residential Tenancy Branch