

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

This expedited hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- An Order of Possession for the tenant, pursuant to section 54; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

Both parties agree that the tenant posted a copy of this application for dispute resolution and evidence on the landlord's door. The tenant testified that the above documents were posted on July 22, 2022 and the landlord testified that she received them on or around that date. I find that the

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above documents were served on the landlord in accordance with the Director's Standing Order dated March 1, 2021.

Preliminary Issue- Availability of Remedy Sought

The tenant testified that when she arrived from vacation at the subject rental property on June 27, 2022, the landlord refused her entry to the subject rental property and told her that new tenants lived in the subject rental property. The tenant testified that she was never given an eviction notice and that the tenancy was ongoing.

The landlord testified that new tenants signed a tenancy agreement for the subject rental property on June 26, 2022 for a tenancy starting on July 1, 2022. The landlord testified that new tenants moved their belongings into the subject rental property before the tenant attended on June 27, 2022.

In the hearing I asked the landlord to upload a copy of the new tenancy agreement, which the landlord did. The tenancy agreement was signed by the landlord and the new tenant on June 26, 2022 and states that the tenancy commenced on July 15, 2022. The landlord testified that July 15, 2022 date was a typo and that the tenancy actually commenced on July 1, 2022.

Regardless of whether the new tenancy commenced on July 1st or 15th, 2022, I find, on a balance of probabilities, that the subject rental property is currently occupied by new tenants.

Residential Tenancy Branch Policy Guideline 51 (PG #51)states:

Under section 54 of the RTA and section 47 of MHPTA, a tenant may apply for an order of possession for the rental unit or home site if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit.

Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another renter is occupying the rental unit; however, the tenant may file a separate application for monetary compensation from the landlord for any damage or loss they may have suffered.

[Emphasis added]

Pursuant to PG #51, I find that I am no able to grant an Order of Possession to the tenant because the subject rental property is currently occupied by new tenants and an Order of Possession for the tenant would infringe on the new tenants' rights. In the hearing I read out the underlined section of PG #51 to the parties and advised that I would not be able to grant the tenant the Order of Possession sought.

In the hearing the tenant sought to amend her claim to add a monetary claim for damages arising out of the alleged illegal eviction. In the hearing I declined to amend the tenant's application because the landlord was not provided with notice of the amendment which is materially different that the original application. I find that to allow the amendment would be procedurally unfair for the landlord and would prejudice the landlord because the landlord was not provided with an opportunity to review and respond to the monetary claim.

I informed the tenant that if she wished to pursue a monetary claim against the landlord, as stated in PG #51, the tenant would have to file a new application for dispute resolution against the landlord.

As the remedy sought by the tenant is this application for dispute resolution is not available to the tenant, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: August 04, 2022

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