



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: OPL FFL
 TT: CNC LRE FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- an Order of Possession pursuant to a Notice to End Tenancy for Landlord’s Use in accordance with section 55; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notices of Hearing were confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of hearing and evidence by posting on the rental unit door on May 20, 2022. I find the landlord provided cogent, detailed and believable testimony. Based on the undisputed evidence

I find that the tenant is deemed served with the landlord's materials on May 23, 2022, three days after posting, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is either party entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord gave undisputed evidence regarding the following facts. The landlord purchased the rental property, a standalone house in December 2021. They took possession of the property in April 2022 and discovered the Respondent was residing on the property. The landlord submits that there has never been a tenancy agreement with the Respondent nor has the Respondent paid any rent or given any consideration for their continued presence on the property. The landlord said there was no information in the contract of Purchase of sale with the seller regarding any tenancy they would be assuming.

The landlord further submits that they have attempted to reside in the rental property, sharing the kitchen and bathroom facilities with the Respondent but there have been incidents of conflict. The landlord has issued Notices to End Tenancy and filed the present application with the Branch upon advice from police that this was a tenancy issue.

Analysis

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means 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 landlord gave evidence that the Respondent has never paid any rent, did not pay a security deposit, and never entered into an agreement with the landlord. The landlord testified that there was never a written tenancy agreement between the Respondent and the seller that they are aware of and the Respondent continues to occupy the property without authorization or agreement. The Respondent has never paid money for the occupancy, nor does it appear that any consideration of value has been provided for this occupancy. Based on the evidence, I do not find that the relationship between the parties is a tenancy.

I further note that the undisputed evidence is that the Respondent shares kitchen and bathroom facilities with the landlord in the property.

Section 4(c) of the *Act* sets out living accommodations to which the *Act* does not apply. It reads in part as follows:

- 4 *This Act does not apply to...*
 (c) *living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,...*

The undisputed submission is that the Respondent uses a bedroom in the rental property while sharing kitchen and bathroom facilities with the landlord who is the owner of the building. Under these circumstances, if there was an agreement between the parties, I would find that the *Act* does not apply to this living arrangement.

Based on the evidence I find that the Respondent is an occupant and not a tenant under the definition of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupant as a tenant. As I am not satisfied that the landlord, or any of the historic landlords, agreed to include the Respondent as a tenant in the property, the *Act* does not apply to their relationship. No Notice to End Tenancy is necessary as neither the Respondent nor the Applicant are governed by the *Act*. I cannot consider the applications of the parties as I have no jurisdiction in this matter.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss both applications for dispute resolution 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: September 23, 2022

Residential Tenancy Branch