



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, FFL

Introduction

The hearing was convened in response to an Application for Dispute Resolution filed by the Landlord, in which the Landlord applied for an Order of Possession.

The Applicant stated that on May 21, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in May of 2022 was posted on the door of the rental unit. In the absence of evidence to the contrary I find that these documents have been served in accordance with sections 88 and 89 of the *Residential Tenancy Act (Act)*, however the Respondent did not appear at the hearing. As the documents were properly served to the Respondent, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Respondent.

The Applicant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Applicant affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Applicant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. She affirmed she would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession on the basis of a One Month Notice to End Tenancy for Cause?

Is the Landlord is entitled to an Order of Possession because the fixed term of the tenancy has ended and the tenancy agreement requires the Tenant to vacate?

Background and Evidence

The Applicant stated that:

- The Respondent moved into the rental unit on January 01, 2020;
- Rent is due by the first day of each month;
- The Respondent agreed to pay \$500.00 in rent to the Applicant;
- The Respondent agreed to pay the pad rent directly to the owner of the site, who is not the Applicant;
- The Respondent agreed to purchase the unit (trailer) from the Applicant for \$10,000.00;
- When the parties agreed to the purchase, the Respondent paid \$2,360.00 toward purchase of the trailer, leaving a balance due of \$7,640.00;
- The last installment payment toward the purchase price of the trailer was made in June of 2021;
- The Respondent missed many rent payments since June of 2021 so the Applicant applied the purchase payments to rent due; and
- The Respondent currently owes \$1,760.00 in rent.

At the beginning of the hearing the Applicant stated there was no written tenancy agreement. She subsequently stated that a written tenancy agreement was submitted to the Residential Tenancy Branch. She was advised that I did not have a copy of that agreement.

The Applicant submitted a ledger that outlines various payments. She stated that she created this ledger in February of 2022; that it does not reflect payments made by the Respondent; and that it reflects payments the Respondent told her would be made, although not all of the payments were made.

The Applicant stated that on March 19, 2022 the One Month Notice to End Tenancy for Cause, dated March 19, 2022, was posted on the door of the rental unit.

The Applicant submitted a copy of the first page of the One Month Notice to End Tenancy for Cause. Although I cannot clearly read this Notice, the Applicant stated that it is dated March 19, 2022 and that it declares the unit must be vacated by April 19, 2022.

The Applicant stated that the second page of the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the rent has been repeatedly late and that the tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Analysis

Before considering the merits of the Application for Dispute Resolution I must determine whether this Application has jurisdiction under the *Residential Tenancy Act (Act)*.

The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*. Jurisdiction can be refused if the parties have an agreement that grants one party an interest in the property that goes beyond exclusive possession and occupation of the rental unit. If the contract gives the other party an interest in the land beyond possession then jurisdiction may be refused.

Residential Tenancy Branch Policy Guideline #27, with which I concur, reads, in part:

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- *money exchanged was rent or was applied to a purchase price;*
- *the agreement transferred an interest higher than the right to possession;*
- *there was a right to purchase in a tenancy agreement and whether it was exercised.*

On the basis of the undisputed testimony of the Applicant, I find that the Applicant agreed to sell the trailer to the Respondent for \$10,000.00 and that when they reached this agreement the Respondent paid \$2,360.00 toward that purchase.

Although the Respondent stated that she subsequently applied the \$2,360.00 payment to unpaid rent, I find that she did not have the right to do so. A seller cannot unilaterally apply money provided to them in regard to a sale to another debt owed to the seller for an unrelated debt.

I find that the agreement between the parties transferred an interest in the unit which goes beyond the relationship of a landlord and tenant. As such, I find that their agreement goes beyond the scope of the *Act* and I decline jurisdiction.

Conclusion

I dismiss the Application for Dispute Resolution, without leave to reapply, as it does not fall under the jurisdiction of the Residential Tenancy Branch.

The Applicant retains the right to pursue the alleged debt through a court of competent jurisdiction.

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 16, 2022

Residential Tenancy Branch