



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL, MNRL, OPC**

Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
3. An Order of Possession for a One Month Notice to End Tenancy For Cause (the "One Month Notice") pursuant to Section 55 of the Act;
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Applicant and the Respondent attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

Both parties acknowledged receipt of:

- the Applicant's 10 Day Notice served by posting on April 10, 2022, Respondent confirmed receipt;

- the Applicant's One Month Notice served by posting on August 28, 2022, the Applicant uploaded a witnessed Proof of Service form #RTB-34 attesting to service of the One Month Notice; and,
- the Applicant's Notice of Dispute Resolution Proceeding package, evidence and Amendment served by registered mail on September 23, 2022, Tracking Number on cover sheet of decision, Respondent confirmed receipt, deemed served on September 28, 2022.

Pursuant to Sections 88, 89 and 90 of the Act I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Jurisdiction

The Applicant testified that this tenancy began as a fixed term tenancy on November 1, 2020. The fixed term ended on December 31, 2021. The Residential Agreement uploaded by the Applicant states:

Rent

8. *Subject to the provisions of this agreement, the rent for the lower rental suite is \$0.00 per month (the "Rent").*

9. *THE TENANT WILL PAY NO RENT BUT MUST VACATE THE RENTAL SUITE AND PROPERTY OF ALL PERSONAL PROPERTY AND ITEMS AFTER RECEIVING TWO MONTHS ADVANCE NOTICE FROM THE LANDLORDS.*

The Respondent stated that no rent was paid during this period as was no security deposit paid. The Applicant said in August 2021 he was trying to get the Respondent to sign a new tenancy agreement indicating that he would pay rent in the amount of \$1,500.00 per month. The parties did not agree on all the terms, and the new tenancy agreement was not signed.

Under the Act, "tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement, and "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 licence to occupy a rental unit.

RTB Policy Guideline #9-Tenancy Agreements and Licences to Occupy clarifies factors that distinguish a tenancy agreement from a licence to occupy. It states:

...

B. TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- *the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and*
- *the tenant pays a fixed amount for rent.*

C. LICENCES TO OCCUPY

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time. ...

...

Other factors

Other factors that may distinguish a tenancy agreement from a licence to occupy include:

- *payment of a security deposit;*
- *the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.*

An arbitrator will weigh all the factors for and against finding that a tenancy exists.

In order for there to be an enforceable contract, there must be an agreement between the parties, or a "*Consensus ad idem*", meaning: meeting of the minds. The basic principles of contract law require an offer, acceptance, and consideration. Consideration means something of value was given for the contract to be valid. In a residential tenancy agreement, this most often means rent.

The Applicant uploaded a residential agreement; however, no consideration (\$0.00 rent) was given. Consideration must be sufficient, but need not be adequate to validate the

agreement. The Applicant testified that the Respondent, a family member, was permitted to live rent free after having three children, and going through a divorce. The Applicant stated the idea was that the Respondent would take the time to get education, and get a job.

Due to the lack of consideration, e.g. the Respondent does not pay rent, I find there is no valid tenancy agreement between the parties, and there is no licence to occupy on the basis that there is no valid agreement between the parties. Based on this determination, the Act does not apply, and I do not have jurisdiction to make a decision in this matter.

As the Applicant was unsuccessful in his claim, he must bear the cost of the application filing fee.

The parties must find their remedy in another forum.

Conclusion

I dismiss the Applicant's application for an Order of Possession and a Monetary Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 15, 2022

Residential Tenancy Branch