



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

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

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the respondent, pursuant to section 72.

The applicant, the applicant's agent (the "agent"), C.F., two support persons for C.F., an advocate for C.F. and the respondent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The applicant only attended the hearing briefly at the start and testified that the agent has authority to represent him in these proceedings. The agent translated for the applicant.

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.

Preliminary Issue- Service

C.R. testified that the respondent was served with the applicant's application for dispute resolution via registered mail on September 21, 2022. The respondent testified that he received the above package on October 4, 2022. I find that the respondent was served in accordance with section 89(2) of the *Act*.

C.R. testified that the respondent was served with the applicant's evidence via posting on September 25, 2022 and via registered mail on October 5, 2022. The respondent testified that he received the September 25, 2022 package posted on the door but it did not contain all the evidence listed on the Notice of Dispute Resolution Proceedings document.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

I exclude the applicant's evidence from consideration because it was not served with the Application for Dispute Resolution as required by Rule 10.2.

The respondent testified that he did not serve the applicant with his evidence.

Rule 10.4 of the Residential Tenancy Branch Rules of Procedure states:

Copies of all of the respondent's available evidence must be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence must be served on the other party in a single complete package.

I exclude the respondent's evidence from consideration because it was not served on the applicant in accordance with Rule 10.4.

Preliminary Issue- Jurisdiction

Both parties agree that C.R. entered into a written tenancy agreement with the applicant (as landlord) in or around April of 2019 while the respondent was incarcerated. Both parties agree that the respondent did not sign the tenancy agreement. Both parties agree that in or around January 2020, the respondent moved into the subject rental property following his release from incarceration. Both parties agree that the respondent was not added to the tenancy agreement and that a new tenancy agreement was not signed.

The agent testified that the applicant is seeking to evict the respondent, who is an unauthorized occupant. The agent testified that the respondent is not a tenant, and that the applicant does not wish to end the tenancy with C.R.

C.R. testified that she is staying at a shelter until the respondent leaves. The romantic relationship between C.R. and the respondent has ended acrimoniously.

The respondent testified that it was always his understanding that when he was released from incarceration, he would move in with C.R. and be added to the lease. The respondent testified that he could not sign the lease at its inception because he was incarcerated. Both parties agree that the respondent organized the initial loan for the deposit. C.R. testified that she repaid the loan the day after it was granted, this was not disputed by the respondent. The respondent testified that he asked the agent to add him to the lease and the agent refused.

The respondent testified that he is a tenant because the landlord dealt with him regarding delivery of new appliances and some rent payments. The agent testified that when he attended at the subject rental property to deliver new appliances and the respondent was there, but he did not know who the respondent was at that time. The agent testified that the applicant has recently accepted some rent payments from the respondent but has consistently communicated with the respondent that he is an unauthorized occupant and not a tenant. The respondent did not dispute receiving correspondence from the landlord/agent stating that the respondent is not a tenant.

The agent and C.R. both testified that the tenancy agreement between the landlord and C.R. is still valid and in effect.

Based on the testimony of the agent, the respondent and C.R., I find that C.R. and the applicant entered into a tenancy agreement in which C.R. was named as a tenant. I find that the respondent was not listed as a tenant in the tenancy agreement and was an occupant when he moved in, sometime around January of 2020.

Based on the testimony of both parties, I find that the tenancy agreement between the landlord and C.R. has not been modified to include the respondent as a tenant. Based on the testimony of both parties, I find that the communication between the applicant/agent and the respondent has been clear and consistent in refusing to add the respondent to the tenancy agreement.

Given the above clear communication between the parties, I find that the respondent's payment of some rent and assistance with new appliances did not create an implied term that the respondent is a tenant. I find that the communications between the parties could not reasonably have given rise to a belief on the part of the respondent that he was a tenant when the agent continuously affirmed otherwise. I find that the respondent is an occupant. I find that the respondent is not a tenant.

Section 2(1) of the *Act* states:

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Residential Tenancy Policy Guideline #13 (PG #13) states:

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant.

As an occupant, pursuant to PG #13, I find that the respondent has no rights or obligations under the tenancy agreement. I find that I do not have jurisdiction under section 2(1) of the *Act* to hear this application for dispute resolution because the applicant has filed this application for dispute resolution against an occupant who does not have rights under the tenancy agreement or the *Act*. I cannot determine this dispute because there is no landlord/tenant relationship between the parties.

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: October 11, 2022

Residential Tenancy Branch