



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord’s 10 Day Notice pursuant to section 66.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, should the 10 Day Notice be canceled or is the landlord entitled to a order of possession?

Background and Evidence

The landlord submits they have no relationship with the applicant and that he is an unauthorized occupant who is believed to be the ex-husband of the tenant S.M. The landlord submits that the applicant contacted the landlord in June 2022 and notified them that S.M. had passed away and he wanted to take over the lease. The landlord submits they have not received any death certificate or any other formal paperwork in regard to the applicant being the executor of the will. The landlord has not signed a lease or accepted any rent from the applicant. The landlord submitted copies of the lease, rental application, Ministry shelter information and move-in inspection all of which only list S.M. as the sole tenant.

The applicant confirmed that his name was never added to the lease. The applicant submits they were on file together with the Ministry for shelter information. The applicant submits he tried to pay rent after S.M. passed but it was rejected by the landlord.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Pursuant to section 2 of the Act, the Act applies to **tenancy agreements**, rental units and other residential property.

The terms "tenancy agreement" and "tenant" are defined under section 1 of the Act as follows:

*"**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;*

"**tenant**" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

The tenancy agreement and related documents submitted by the landlord only identify S.M. as the legal tenant. There is no evidence that the applicant was added as a tenant or that the landlord accepted rent payments from the applicant. Further, the applicant failed to provide any evidence that he has been appointed as the personal representative for the estate of S.M.

I find that I do not have jurisdiction over this matter. This application is dismissed without leave to reapply. As I do not have jurisdiction, I make no findings on the merits of the 10 Day Notice.

Conclusion

I find that I do not have jurisdiction over this matter.

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: November 07, 2022

Residential Tenancy Branch