



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

The Applicant filed for an expedited dispute resolution hearing under the *Residential Tenancy Act* (the “Act”) seeking an order of possession for the rental unit, and recovery of the cost of the filing fee. The Director of the Residential Tenancy Branch has established the expedited hearing process for circumstances involving a tenant allegedly being denied access to their rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 15, 2022. The Tenant attended the hearing; however, the Landlord did not. I provided the Tenant the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matter – Notice of Dispute Resolution Proceeding to the Landlord

The Tenant finalized their Application on October 28, 2022 and received the Notice of Dispute Resolution Proceeding (the “Notice”) from the Residential Tenancy Branch on November 1, 2022.

In the hearing, the Tenant described getting help from a third party to serve the Notice in a timely manner to the Landlord. They completed a “Proof of Service” document and provided it in their evidence to document that process. This indicates they served the Notice to the Landlord via third party, attaching it to the door at the Landlord’s residence on November 2, 2022 at 5:02pm. The third party attested to this service by signing the “Proof of Service” and a witness also signed to state that they witnessed that service by that 3rd party.

In the hearing, the Tenant also stated they served their prepared evidence with the Notice at the same time. This was “everything that I could. . . was served to [the Landlord]”.

From what the Tenant presented here on notifying the Landlord of this hearing, I am satisfied they served the Notice to the Landlord. This was required, as per s. 71(2)(a), and the Standing Order dated March 1, 2021, specifically authorizing this method of service – *i.e.*, attaching a copy to a door or other conspicuous place at the address at which the person resides – despite s. 89 of the *Act*.

The *Residential Tenancy Branch Rules of Procedure* specify that a notice must be served “within one day of that Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch.” I find the document was served by the Tenant to the Landlord on November 2, 2022. As per s. 90(c) of the *Act*, I deem the document received by the Landlord on November 5, 2022.

The Landlord provided evidence to the Residential Tenancy Branch on November 6, 2022. I find this is proof that the Landlord was aware of the hearing, and in particular used key information from the Notice to provide evidence to the Residential Tenancy Branch. Even with the Notice, the Landlord did not attend the hearing.

In the hearing, the Tenant stated they did not receive evidence from the Landlord. Because of this, I did not consider this evidence from the Landlord in the hearing, where doing so would be prejudicial to the Tenant.

Issues to be Decided

Does the Applicant have a legal right to possess the rental unit, pursuant to s. 54 of the *Act*?

Is the Applicant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant produced no tenancy agreement document as evidence in this hearing. They stated the agreement was “a mix between verbal and written in terms of actually having to live at the residence while doing renovations”. They lived on the property while completing contracted renovation work. This was in the garage, where they installed a washroom, and used a fridge and a portable-style element for cooking, with a barbecue outside.

In their evidence, the Tenant provided what they submit is proof of a tenancy agreement. This was an arrangement for contracted work that started on June 20, 2022. Upon completion of the work, the amount of rent at \$900 per month would be deducted from what the Landlord would pay to the Tenant. A handwritten work order that specifies all tasks to be completed contains the statement: “rent covered for 2 months, storage owed by you – 2 mnths”. Also, a message, purportedly from the Landlord on March 18, states: “U need to live there.”

The Tenant submitted that the Landlord locked the Tenant out of the garage because of dissatisfaction with the work being completed by the Tenant. This happened on September 27, 2022. The Tenant submitted that the Landlord refused to issue an eviction notice to the Tenant. The Tenant sought the help of police in seeking to gain entry into the rental unit; however, the police concluded it was a civil matter and could not assist.

Analysis

The *Act* provides that “tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement. A “tenancy agreement” is 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.

A “rental unit” is defined in s. 1 as “living accommodation rented or intended to be rented to a tenant” and “residential property” includes “ the parcel or parcels on which a building, related group of buildings. . . in which one or more rental units . . . are located . . . and . . . (d) any other structure located on the parcel or parcels.”

The *Act* s. 54 provides that a tenant may apply for an order of possession for the rental unit if they have a tenancy agreement with the landlord. If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and the landlord.

I find the Tenant proved that an agreement exists; further, I find the accommodation, as they described it, is a “rental unit.” They provided basic information, and the *Act* is specific that “tenancy agreement” does include a license to occupy. The *Residential Tenancy Policy Guideline 9. Tenancy Agreements and Licences to Occupy* sets out the policy intent of the legislation. It defines “license to occupy” as “a person is given permission to use a rental unit . . . but that permission may be revoked at any time.”

Further, I find the Landlord did not have an order of possession authorizing possession of the rental unit, nor a sanctioned eviction of the Tenant. There is no evidence the Landlord sought or received a Supreme Court writ of possession. Based on this, I find the Landlord did not have the legal authority to lock the Tenant out from the rental unit on September 27, 2022.

Minus evidence to the contrary from the Landlord, I find the Tenant has the legal right to possess the rental unit. This is based on the uncontested statements of the Tenant in the hearing, as well as the evidence they presented.

I grant the Tenant an order of possession effective immediately. The Landlord is so ordered to allow the Tenant access to the rental unit. This entails providing the Tenant a means of entry with a key for any locked door.

Because the Tenant was successful in this hearing, I grant

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100 filing fee they paid for this Application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

I find the Landlord did not have the authority to evict the Tenant from the rental unit unilaterally on September 27, 2022. The Tenant has an order of possession effective immediately. I order the Landlord to allow the tenant access to the rental unit, via a key or other viable means of entry.

The Tenant has leave to apply for any loss as a result of being illegally evicted from the rental unit.

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

Dated: November 17, 2022

Residential Tenancy Branch