



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DINOMITE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

On November 16, 2022 the Applicant here filed an Application at the Residential Tenancy Branch for dispute resolution. They seek an order of possession for the rental unit and recovery of the filing fee cost. The Director of the Residential Tenancy Branch has established the expedited hearing process in circumstances that include when a tenant has been denied access to their rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Branch* (the “Act”) on December 12, 2022. Both the Applicant and the Respondent attended the hearing.

Preliminary Matter

The Applicant provided the Notice of Dispute Resolution Proceeding, provided to them by the Residential Tenancy Branch, to the Respondent via registered mail. This included their prepared documentary evidence. The Respondent confirmed receipt of the same.

The Respondent provided their evidence to the Applicant via registered mail to the address used for previous correspondence from the Applicant. At the time of the hearing, the Applicant stated they had not received this material. The Respondent provided tracking number postal information and verified during the hearing that the material was delivered to the address on December 6. The Applicant queried whether this delivery met the standard timelines provided for by the Residential Tenancy Branch in preparation for a hearing. The Respondent cited the *Rules of Procedure* that

provided for an expedited hearing disclosure from a respondent in two days before the hearing.

The Respondent correctly cited the *Residential Tenancy Branch Rules of Procedure* that provided for a respondent's evidence provided to the other party at least two days before the hearing. I am satisfied the Respondent delivered their material to the Applicant in a timely manner and I do not consider this material late, and it receives my full consideration herein.

Issue(s) to be Decided

Does the Applicant have a legal right to possess the rental unit, and should they receive an order of possession?

Background and Evidence

The Applicant presented the background to their Application:

- on November 8 they received a tenancy agreement from the Respondent, already signed – at that time the Respondent requested the Applicant's signature and deposit
- on November 13 the Applicant was ready to sign, and told the Respondent they would do so by the end of the day and send the deposit
- the Respondent was "demanding" as shown in the Applicant's evidence – the Respondent said "no" at approximately 530 on that same date, this despite the Applicant signing the agreement
- this left the Applicant without a home as of December 1st, and they could only opt for something else more expensive at the last minute.

The Respondent presented a comprehensive timeline of events:

- November 8: the Applicant viewed the rental unit and completed the application form
- November 9: the Respondent forwarded an email containing their offer for tenancy. This gave the directive that the rental unit was not secure until the Applicant sent a deposit, containing instructions on how to send a deposit.

- same day: the Applicant requested a copy of the tenancy agreement, the Respondent sent that
- November 10: the Respondent followed up with the Applicant, not having received the deposit. The Applicant responded by saying they were “on it now” and then requested a six-month lease.
- November 12: the Respondent declined the six-month lease; however, the Applicant advised they were still interested in renting the unit.
- November 13 am: the Respondent asked for a call to discuss the matter, stating they would offer the rental unit to another if the Applicant was not proceeding.
- same day, pm: the Applicant advised they would send the tenancy agreement
- same day, 525pm: the Respondent advised they would offer the rental unit to another if the Applicant was not proceeding with securing the rental unit
- same day, 559pm: the Applicant advised they would do it later
- 625pm: the Respondent advised via email that the offer was rescinded
- 630pm: the Respondent advised via text message that the offer was rescinded
- 636pm: the Applicant provided a signed copy of the tenancy agreement
- 809pm: the Respondent received notification that the Applicant sent an etransfer, and declined the etransfer
- 821pm: the Applicant sends another tenancy agreement copy, showing the deposit as paid on November 13.

On November 15, 2022 the Respondent secured a new tenant for the rental unit by receiving a security deposit.

The Respondent submits the parties never entered into a tenancy agreement. They rescinded the offer for a tenancy on November 13 at 625pm, before they received a security deposit or a signed tenancy agreement. They did not accept the security deposit and do not have it currently.

The Respondent takes the position that there was no signed tenancy agreement in place before they rescinded their offer of a tenancy. There is thus no landlord-tenant relationship, and an order of possession is not in order in this situation. Their feeling was that the Applicant had plenty of time to respond from the 8th onwards when they indicated they wanted to secure the rental unit. They at no time messaged to the Applicant to say they had until the 13th. The basic repeated response from the Applicant was “yes, I will. . .”

The Applicant in the hearing maintained that the Respondent wanted the tenancy agreement by Sunday night (*i.e.*, late November 13th). Without waiting, the Respondent rescinded their offer.

Analysis

The *Act* s. 54 provides that a tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

This is a situation where another renter is occupying the very same rental unit in question. This automatically prevents my granting of an order of possession to the Tenant. The Respondent, as landlord, would not have a valid reason for ending this separate tenancy, and would jeopardize other tenants' legal right to occupy the rental unit.

Aside from this, the Applicant here bears the onus to prove that a tenancy agreement exists between them as the tenant, with the Respondent as the landlord in this scenario.

The *Act* s. 1 defines "tenancy": a tenant's right to possession of a rental unit under a tenancy agreement.

Also, "tenancy agreement":

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

The *Act* s. 16 provides that the rights and obligations of a landlord and a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not a tenant ever occupies the rental unit.

A tenancy, in the simplest terms, is an agreement; therefore, it is a contract between a landlord and a tenant. A tenant has no right to reside in a rental unit without the express permission of a landlord.

The basic components of a contract are:

- offer;

- acceptance;
- consideration; and
- capacity.

A typical scenario in a tenancy runs thus:

1. a landlord offers to rent the rental unit to a tenant;
2. a tenant accepts a landlord's offer and agrees to rent the rental unit from the landlord;
3. a tenant pays a security deposit as consideration (*i.e.*, the item of value given in exchange for the contractual promise);
4. both parties enter into a tenancy voluntarily and free from any undue influence, understanding the nature of the agreement.

I find an offer is good for a reasonable time, or until a landlord withdraws it. In this present situation, I find the Respondent's offer was complete, containing all terms of the tenancy, by November 9, 2022.

The Tenant's acceptance was not unequivocal. The Tenant replied "on it" as an indication they would complete their acceptance; however, the key step of the provision of the security deposit was not finalized. Nor was the tenancy agreement signed in relatively short order. This was on November 10, 2022, the day after the Landlord sent the agreement to the Tenant. On that day the Tenant also requested a six-month fixed term for this tenancy agreement.

At that time, there was a condition attached to the Tenant's acceptance of the Landlord's offer. To say 'I accept, but only if it's a six-month fixed term agreement' is not an acceptance.

I find the Respondent afforded the Applicant ample time to sign the tenancy agreement and send a security deposit. The Respondent even had the agreement signed as the "landlord" in advance, to facilitate the process with ease. The final opportunity was at 11:06am on November 13; however, the Applicant did not take the final steps to complete their acceptance until after the Respondent rescinded the offer.

At 5:59pm, the Applicant advised they would complete the required acceptance still later, with a time not defined. I find this was *still* not completion of the steps needed to complete the unequivocal acceptance of the offer. Given the time that had passed from the initial discussion on November 9, 2022, I find it was reasonable for the Respondent

to conclude the Applicant was not completing their acceptance. This was at the cost to them of securing other offers which they did in relatively short order.

I find the Applicant did not proffer an explanation for why they did not complete their acceptance on November 12, 2022. I find the Applicant did not answer the final queries from the Respondent – at 11:06am and 5:25pm – with surety and, most importantly, action.

By the time the Applicant signed the agreement and provided a deposit, the Respondent had rescinded the offer.

In sum, I find the parties did not enter into a tenancy agreement in November 2022. There was no element of acceptance in a contractual relationship; therefore, no tenancy agreement.

Conclusion

Because there was no tenancy agreement in place between the parties, I find the Applicant here is not entitled to an order of possession. I dismiss this Application in its entirety, without leave to reapply.

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: December 13, 2022

Residential Tenancy Branch