



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* ("Act") for:

- an early end to tenancy and an order of possession, pursuant to section 56; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The applicant, the applicant's agent, and the respondent attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 34 minutes from 9:30 a.m. to 10:04 a.m.

All hearing participants confirmed their names and spelling. The applicant and the respondent provided their email addresses for me to send this decision to both parties after the hearing.

The applicant confirmed that his agent had permission to represent him at this hearing and identified him as the primary speaker. The applicant confirmed that he owns the property, that is the subject of this application. He provided the property address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Both parties had an opportunity to ask

questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The respondent confirmed receipt of the applicant's application.

The respondent stated that he served his evidence to the applicant on January 8, 2023, by leaving a copy up against the door of the applicant's address indicated on this application. The applicant confirmed that was his address, but he did not receive any evidence from the respondent. The applicant's agent stated that he did not receive any evidence from the respondent either. Although the applicant did not receive the respondent's evidence, I considered same in this decision, for the purpose of determining jurisdiction only, not for deciding the merits of the applicant's application.

I have corrected the spelling of the applicant's first name and the respondent's surname, as both parties consented to same during this hearing.

Issue to be Decided

Does the RTB have jurisdiction, pursuant to the *Act*, to decide this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the jurisdiction claim, and my findings are set out below.

The issue of jurisdiction was raised verbally by the applicant and his agent, at the outset of this hearing. Therefore, I asked both parties to make submissions regarding jurisdiction only, at this hearing. I did not hear any substantive evidence regarding the merits of the applicant's application at this hearing.

The applicant's agent testified regarding the following facts. This is not a tenancy, and the respondent is not a "tenant." No written tenancy agreement exists between the applicant and respondent. After the previous tenants vacated the property, the respondent broke into the applicant's property, kicked in the windows, and began living there without the permission of the applicant. The applicant contacted the police, who

told him this is an RTB matter. The respondent has not paid any money, including for rent, to the applicant, to live at the property.

The applicant testified regarding the following facts. He agreed that the respondent could pay him \$500.00 to stay at the property for the last two weeks of August. The respondent has not paid the applicant any money for residing at the property. The applicant was trying to sell the property for September 1.

The respondent testified regarding the following facts. He paid the applicant \$500.00 to stay at the property in August. There is no written tenancy agreement, but the RTB told the respondent that he could have a verbal agreement. He is entitled to live at the property for \$500.00 per month. There was a conversation about him paying \$600.00 per month to live at the property and he is ok with this. There was another tenant living at the property before him and paying \$1,100.00 per month for rent to the applicant.

Both parties agreed that a future RTB hearing involving these parties and this property, is scheduled for March 30, 2023, for the respondent's application to dispute a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"). The file number for that hearing appears on the front page of this decision. The respondent claimed that he had until March 30, 2023, to vacate the property.

Analysis

The following sections of the *Act* state, in part:

Definitions

1 In this Act:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;*
- (b) a pet damage deposit;*
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];*

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;*
- (b) a pet damage deposit;*
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];*

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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;

What this Act applies to

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.

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes]...

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord or the landlord's agent;*
- (f) the agreed terms in respect of the following:*
 - (i) the date on which the tenancy starts;*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;*
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;*
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;*
 - (vi) which services and facilities are included in the rent;*
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.*

I find that the RTB does not have jurisdiction to decide the applicant's application, since it is not a residential tenancy matter, pursuant to the Act.

Neither party provided a copy of a written tenancy agreement, written contract, or other sufficient documentation indicating this is a tenancy, at the property, between the

applicant and respondent, as a “landlord” and “tenant.” Neither party provided sufficient documentation referring to the payment of rent, the services or facilities included in rent, the payment of a security deposit, or the periodic or fixed term of the tenancy, or other standard terms of a tenancy agreement, as required by section 13 of the *Act*, above.

I find that the respondent has not paid any rent or a security deposit to the applicant to live at the property. Neither party provided a copy of sufficient documentation to prove same. I find that this is not a verbal tenancy agreement, as only the respondent alleges same, while the applicant denies same. Neither party provided a copy of sufficient documentation to prove same. I find that there is no agreement between the parties for the respondent to reside at the property for a fixed or periodic term.

The applicant provided written evidence with this application, stating the following:

“The people inside this house were never allowed as tenants. They broke a window to get into the house & will not leave. The last tenant was paying \$1,100.00 per month for rent. These people had moved in on September 1, 2022, uninvited & have not paid any money at all for 5 months.”

The applicant provided the above written evidence indicating that the respondent broke a window to gain access to the property, without the applicant’s permission. The RTB does not have jurisdiction to deal with criminal matters or offences pursuant to the Criminal Code of Canada. During this hearing, I notified both parties that the police do not have jurisdiction, pursuant to the *Act*, to determine whether the *Act* applies and whether the RTB has jurisdiction regarding a dispute.

The applicant confirmed above that the respondent never paid any money to the applicant, for 5 months of residing at the property. I find that the respondent failed to provide sufficient documentary evidence, such as bank records, rent receipts, e-transfer confirmations, certified cheques, cancelled cheques, bank drafts, or other sufficient documents, confirming that he paid \$500.00 to the applicant for August rent, as he claimed in his testimony. I find that the respondent failed to provide sufficient documentary evidence that he had an agreement to pay rent of \$500.00 to the applicant, to reside at the property for a period of time as a tenant under a tenancy agreement.

The respondent provided written evidence with this application, stating the following (redactions made for confidentiality purposes):

“My name is [previous tenant’s name] I was a tenant at [property address] where I had a rental agreement with [applicant’s name]. I resided there with my sons [names of former tenant’s two sons] I invited [respondent’s name and son’s name] to stay with us for a week or two while they worked for [applicant’s name] at his mill in [name of town].”

The respondent provided the above written evidence indicating that he began living at the property at the invitation of the previous tenant, “for a week or two” because the respondent was employed by the applicant. Section 4(d) of the *Act* excludes living accommodation included with premises that are primarily occupied for business purposes. Further, the RTB does not have jurisdiction to determine labour or employment contract disputes.

Both parties referenced a future RTB hearing on March 30, 2023, for the respondent’s application to dispute a 10 Day Notice. Simply because the applicant issued a 10 Day Notice using an RTB form, is not determinative that this is a residential tenancy matter under the *Act*. A determination of jurisdiction is made based on the facts and evidence. Although I have referenced this dispute, since both parties raised it during this hearing, I have not made any determination on the merits of that application.

The RTB only determines residential tenancy disputes between landlords and tenants, under a tenancy agreement, pursuant to the *Act*.

For the above reasons, I decline to exercise jurisdiction over the applicant’s application. I find that the applicant’s application is not a residential tenancy dispute, that can be determined by the RTB, pursuant to the *Act*. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

Conclusion

I decline to exercise jurisdiction over the applicant’s application.

I make no determination on the merits of the applicant’s application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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: January 10, 2023

Residential Tenancy Branch