



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PI COUTURE DESIGN GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

On January 10, 2023, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking an order of possession of the rental unit.

The Tenant and the Landlords attended the hearing. The Landlords were assisted by legal counsel. The Landlords and Tenant provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties conformed that they exchanged their documentary evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

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

Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 1, 2023, as a one year fixed term tenancy. Rent in the amount of \$2,000.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,000.00.

The Tenant is seeking an order of possession for the rental unit.

The Landlord's counsel submitted that the Act does not apply to this dispute because the living arrangement does not give the Tenant exclusive possession of the rental unit as he shares the kitchen and bathroom with the owner of the property.

Mr. C.F. testified that he decided to rent out his room to assist with the mortgage payments. The other owner Mr. S.L. has occupation of the other bedroom and stays there on occasion. The Landlord pointed out that the advertisement for the rental unit provides that only one bedroom is being rented. The Landlord provided a photograph of the Landlord's furnished bedroom. The Landlord provided a copy of the rental advertisement that states luxury furnished master bedroom for rent. The Landlord stated the advertisement was placed under the category of Rooms and Shared accommodation. The advertisement provides that space in the two-bedroom one bathroom condo is available; only the master bedroom is being rented out; and the owner lives in this condo...

The Tenant stated that when he went to view the rental unit, he became aware that the Landlord was keeping the other bedroom for himself and would occasionally stay over. The Tenant confirmed that there is only one kitchen and bathroom and that it would be shared.

On December 23, 2022, 21 days after the tenancy agreement was signed, Mr. S.L. considered moving out and renting out his bedroom. They approached the Tenant about this scenario and the Tenant was unhappy and wanted to end the living arrangement.

The Tenant provided a copy of a rental listing for the unit dated December 27, 2022.

The Landlord testified that the Tenant asked for his \$7,000.00 to be returned and the Landlord agreed on December 24, 2022, but the Tenant refused to sign a mutual agreement document ending the arrangement. On December 24, 2022, the Tenant asked how much it would be for him to rent the other room and live there by himself.

The Tenant testified that on December 30, 2022 the Landlords informed him that he could not move into the unit. Regardless of this the Tenant attended the rental unit on December 31, 2022 and was unable to access the unit. The Tenant testified that he attempted to call the Landlord only once when he could not get access.

The Tenant confirmed that he did not provide a written notice to end the tenancy and he did not receive a notice to end tenancy from the Landlords.

The Tenant submits that this was an illegal end of tenancy and wants an order of possession.

The Landlord's counsel submitted that there were a number of disputes between the Tenant and Landlord. The Landlord submitted that the Tenant entered the unit prior to the start of the tenancy and had someone else living there. On December 26, 2022, the Landlord discovered the Tenant living and partying inside the condo causing damage.

The Landlord submits that the Tenant asked to end the tenancy if the Landlord proceeded with renting out the other bedroom. The Tenant did not show up at a proposed time to get his money returned and sign a mutual agreement to end the tenancy. The Landlord then prevented the Tenant from access to the unit.

Analysis

Based on the testimony of the parties and the evidence before me I make the following findings:

I do not accept the Tenant's submission that since the tenancy agreement does not identify that the tenancy was only for one bedroom and/or a shared living arrangement he is legally entitled to the entire unit. I question the reasonableness of the Tenant statement believing that he rented a luxury 2-bedroom condo for only \$2,000.00 per month.

The listing provided by the Tenant was posted by the Landlords on December 27, 2022 advertising the entire unit for \$3,000.00 per month. The posting was made by the Landlords after the Tenant indicated he wanted to end the tenancy.

I find that the Landlords and Tenant entered into a contract for a shared living arrangement. I accept the Landlords' evidence that the rental advertisement provided that that space in the two-bedroom one bathroom condo is available and only the master bedroom is being rented out; and that the owner lives in the condo. The Tenant acknowledged his understanding of this arrangement when he went to view the unit.

While the Landlord considered moving out and renting out the other bedroom, this did not occur. The terms of the original living arrangement with the owner remained in place.

Section 4 of the Act provides that This Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

While I find that the parties have entered into a tenancy contract, I find that the Act does not apply to this living arrangement. I find that the Respondents are owners of the unit, and they share a kitchen and bathroom with the Applicant. I find that I do not have jurisdiction to resolve the dispute.

The Application for an order of possession for the rental unit is dismissed without leave to reapply.

Conclusion

While I find that the parties have entered into a tenancy contract, I find that the Act does not apply to this living arrangement. I find that the Respondent is an owner of the unit, and they share a kitchen and bathroom with the Applicant. I find that I do not have jurisdiction to resolve the dispute.

The Application for an order of possession for the rental unit is dismissed without leave to reapply.

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: February 03, 2023

Residential Tenancy Branch