



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPT, FFT**

Introduction

This hearing dealt with an application for orders as follows:

- for an order of possession pursuant to section 54 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Respondent LH appeared with agent JC. Applicant LY appeared with witness KY and interpreter LY. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The applicant testified that she did not receive the respondent's evidence. The respondent testified that they served the applicant by email and did not have an order for substitutional service. Under section 88 of the Act, as well as section 43 of the Residential Tenancy Regulations, service by email is permitted only if the other party has provided an email address for service. The applicant testified she did not provide an email address for the purpose of service. Therefore, I will not consider the respondent's evidence.

The respondent testified that he received the applicant's dispute notice but did not receive any evidence. The applicant testified that she served the respondent by registered mail on May 6, 2023 as well as posting it on the respondent's door. She provided Canada Post tracking information in evidence showing that the package was delivered on May 9, 2023. Additionally, she provided a picture of the package taped to the respondent's door. I find that the respondent was served with the applicant's

dispute notice and evidentiary materials by posting them to the door. I have viewed the picture provided in evidence and note that there is a dispute notice attached to an envelope. I therefore infer that the evidence was contained within the envelope and find that the landlord was properly served pursuant to sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the applicant entitled to an order of possession for the rental unit?
2. Is the applicant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement was provided in evidence. The tenancy commenced on March 20, 2022 on a fixed term basis until February 28, 2023. Rent was \$1,330.00 per month due on the first of the month. The respondent took a security deposit of \$665.00.

The applicant was not named as a tenant on the tenancy agreement. An individual, YY, is the only tenant listed in the tenancy agreement. YY did not appear at the hearing. The applicant is asking for an order of possession on the basis that she is the tenant of the rental unit, not YY.

The applicant testified that she was the only person who occupied the rental unit. The applicant argued YY was not a tenant but was an intermediary between herself and the respondent. The applicant stated that she paid the rent in cash to the respondent and the respondent knew she was occupying the rental unit. The applicant provided pictures in evidence of cash, as well as pictures of her living accommodations and pictures depicting her lifestyle. The applicant also provided copies of messages that she alleges are between herself and the respondent.

The respondent testified that the tenancy agreement was signed by himself and YY. YY provided an affidavit stating that he lived in the rental unit and the applicant was living there as his girlfriend. The landlord stated that he received rent by electronic transfer. The respondent and YY signed a mutual agreement to end tenancy and YY vacated the rental unit on April 30, 2022. The respondent alleged that he did not have an agreement with the applicant and the applicant was not a tenant in the rental unit.

Analysis

RTB Rules of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In coming to a decision, I have considered all relevant evidence provided by the parties.

Is there a Tenancy?

The term tenancy is defined in the Act and states:

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

Section 2 of the Act states:

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.

The applicant is not listed as a tenant in the tenancy agreement. The applicant provided copies of text messages that purport to be between herself and the respondent regarding payment of rent. These messages are not in English, they contain English translations, however the translations only refer to a “payment”. They do not refer to “rent”.

The applicant also provided copies of electronic transfers in evidence, and some appear to be for the same amount as rent. However, in the hearing she stated she paid the rent in cash. The applicant also uploaded various photographs of food, cash, and pictures of rooms in a residence. I find that none of this evidence establishes that the

applicant was a tenant in the rental unit and had a contractual relationship with the landlord.

The respondent testified that the applicant was not a tenant, and the tenant was YY who allowed the applicant to live in the rental unit.

RTB Policy Guideline 13 states in part:

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

The applicant is not listed on the tenancy agreement. I find she was permitted by the tenant to occupy the residence and based on RTB Policy Guideline 13 she is an occupant of the rental unit. I find that the applicant was not a tenant, there is no tenancy between the applicant and respondent, and I have no jurisdiction to decide this matter.

RTB Policy Guideline 13 states further:

If the tenant gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of that notice and all tenants must move out, even where the notice has not been signed by all tenants.

Tenant YY in this case signed a mutual agreement to end the tenancy on April 30, 2023 with the landlord respondent. As a result, and based on RTB Policy Guideline 13, the tenancy of all tenants ended on April 30, 2023.

The application is dismissed due to a lack of jurisdiction. As I have dismissed the application, the applicant is not entitled to recover the filing fee for this application.

Conclusion

The application 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: June 6, 2023

Residential Tenancy Branch