

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- An Order of Possession based on an uninhabitable rental unit or a frustrated tenancy agreement under section 56.1 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing dealt with the Applicants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Preliminary Matters

- Jurisdiction for Claim Submitted by Applicant ST and Applicant JC

The original landlord of the property had a tenancy agreement with Tenant CC. The tenancy agreement lists CC as the sole tenant and listed Applicant JC as a minor occupant. Based on the testimony of both parties the tenancy agreement was never changed or amended to include Applicant JC or Applicant ST as a tenant. The Landlord took over the tenancy around March 2024. The parties advised Tenant CC is deceased.

Based on the above, the evidence and testimony of both parties, I find that Applicant ST and Applicant JC are not tenants, but occupants of the rental unit. As stated in Policy Guideline #13, an occupant has no rights or obligations under the tenancy agreement.

Consequently, I find that the Act does not apply to occupants. As a result, I have no jurisdiction to consider this Application and render a Decision in this matter. I decline to proceed due to a lack of jurisdiction on Applicant ST and Applicant JC's claim.

The rest of this Decision will deal with the Landlord's application against Tenant CC.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant CC was served on July 8, 2024, by posting it to the door of the rental unit in accordance with section 89(1) of the Act, the third day after being posted to the door.

Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

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Issues to be Decided

- Has the Tenancy Agreement been frustrated?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on May 17, 2024, with a monthly rent of \$1,114.38, due on the first day of the month, with a security deposit in the amount of \$500.00. The Landlord took over this tenancy around March 2024.

The Landlord is seeking an Order of Possession on the basis that the tenancy agreement is frustrated.

The Landlord's position is that the tenancy agreement is frustrated because the only tenant listed on the tenancy agreement passed away. The Landlord's legal counsel S.D. (the Landlord's Counsel) argued that the death of one of the parties to a contract results in the contract being frustrated and all parties are relieved from fulfilling the obligations under the tenancy agreement. The Landlord's Counsel argued the occupants have been paying rent, but it has been for use and occupancy only.

The Tenant's agent BL (the Tenant's Agent) argued that occupant JC is listed on the tenancy agreement as a minor and that occupant LL will be applying to be an executor of the estate of Tenant CC, but nothing has been granted and the process is still ongoing. The Tenant's Agent also argued that occupant JC was given a mutual agreement to end tenancy document and was treated like a tenant.

In response the Landlord's Counsel argued occupant JC was never listed as a tenant only an occupant on the tenancy agreement and the mutual agreement to end tenancy document was blank and not addressed to occupant JC.

Analysis

Has the Tenancy agreement been Frustrated?

According to Policy Guideline #34, a contract is frustrated when "without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible". The test for determining if a contract has been frustrated is a high one and the change in circumstances must totally affect the nature, meaning, purpose effect and consequences of the contract so far as either or both parties are concerned.

Based on the testimony of both parties, I find that the tenancy agreement is not impossible to complete. While the death of an individual to a tenancy agreement can result in frustration, the tenancy agreement must be incapable of being performed. In this case, rent, while only being paid for use and occupancy, has continued to be paid on behalf of the deceased Tenant. Additionally, as stated in section 1 of the Act a tenant includes the estate of a deceased tenant. The Tenant's Agent testified that occupant LL applied to be an administrator of Tenant CC's estate; however, nothing has been granted and the process has not been completed. Once an individual has been approved by the court to administer the estate, the administrator of the estate is responsible for any rights and obligations under the tenancy agreement. As such, I find that the contract is not incapable of being performed.

I do not accept the arguments of the Tenant's Agent that occupant JC was a tenant, as the tenancy agreement only lists them as an occupant. Furthermore, I do not find that providing an individual with a blank mutual agreement to end tenancy document implies a tenancy agreement.

Based on the above, I find that the tenancy agreement has not been frustrated.

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I find that the tenancy agreement has not been frustrated.

The Landlord's application is dismissed, without leave to reapply.

I decline to proceed with the application filed by Occupant JC and ST due to lack of 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 Act.

Dated: August 29, 2024

Residential Tenancy Branch