

DECISION

Introduction

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

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The hearing also dealt with the Respondent's Application for Dispute Resolution under the Residential Tenancy Act (the Act) for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under
- section 72 of the Act

Preliminary Matters

The Applicant and Respondent gave testimony that the Applicant has never paid rent, never signed a tenancy agreement, and never paid a security deposit.

Residential Tenancy Branch Policy Guideline 9 provides the following:

Tenancy agreement is defined in the Act as 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.

Under a tenancy agreement, the Tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the Tenant gains exclusive possession of the rental unit or site, subject to the Landlord's right to access the site, for a term; and

- the Tenant pays a fixed amount for rent.

Section 13(2) of the Act states 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 Applicant is not a Tenant of the unit. The Applicant and the Respondent never entered into a tenancy agreement as defined in the Act as 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 Applicant never paid a security deposit, and there was never an established amount of rent payable for a specific period as required under section 13(2) of the Act, for a tenancy agreement to exist between the parties.

Conclusion

The Act does not apply to the relationship between the parties. The applications are 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 Act.

Dated: November 7, 2024

Residential Tenancy Branch