



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction and Preliminary Matters

On August 8, 2022, the Applicant applied for a Dispute Resolution proceeding seeking an Order of Possession based on an early end of tenancy pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Applicant attended the hearing, with S.D. attending as counsel for the Applicant. Respondent K.K. attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of S.D., provided a solemn affirmation.

S.D. advised that each Respondent was served with the Notice of Hearing and evidence package by hand on August 23, 2022, and the Respondent confirmed that these were received. As such, I am satisfied that the Respondents were sufficiently served with the Notice of Hearing and evidence packages. Consequently, I have accepted this evidence and will consider it when rendering this Decision.

The Respondent advised that he submitted evidence to the Residential Tenancy Branch “a few days ago”; however, there was no evidence submitted on this file. Regardless, he

confirmed that he did not serve this evidence to the Applicant. Given that there is no evidence submitted on this file, and given that the Respondent did not serve this alleged evidence to the Applicant anyways, I am satisfied that there is no evidence from the Respondents to consider on this file.

S.D. advised that the Applicant was a co-owner of the property and that the other co-owner, B.C., lived on the property. She submitted that the Respondents both lived with B.C. and that they shared the kitchen and/or bathroom with him. She stated that B.C. passed away on April 30, 2022, and she referenced the documentary evidence submitted to support this position. She stated that they would not like to amend the Style of Cause on this Application to include the estate of B.C. as an Applicant.

As well, she cited a letter, dated May 3, 2022, to the Respondents advising them that they were roommates of B.C. and were required to vacate the property on May 8, 2022. She confirmed that no approved, Residential Tenancy Branch notice to end tenancy form was ever served to the Respondents. Given that the Respondents shared a kitchen and/or bathroom with the former co-owner of the property, it is the Applicant's position that the *Act* does not apply to this situation.

The Respondent advised that they shared the kitchen and/or bathroom with B.C. and that B.C. was an owner of the property. He testified that they had disputed a notice to end tenancy with the Residential Tenancy Branch; however, he confirmed that they were never served an approved, Residential Tenancy Branch notice to end tenancy form. He stated that he attempted to start a tenancy with the Applicant, but this was rejected.

When reviewing the totality of the submissions of the parties, the consistent and undisputed evidence before me is that B.C. was an owner of the property and that the Respondents shared a kitchen and/or bathroom with him prior to his passing. I find it important to note that Section 4(c) of the *Act* states that "this Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation."

Furthermore, I note that the Applicant never served a Residential Tenancy Branch notice to end tenancy form to the Respondents, but did serve them a letter indicating that the Respondents were roommates of B.C. and that they must vacate the property. As an approved Residential Tenancy Branch notice to end tenancy form was never served to the Respondents, I find it reasonable to conclude that this further supports the

Applicant's position that there was no tenancy here under the jurisdiction of the *Act*. While it is K.K.'s position that they attempted to start a tenancy with the Applicant, I note that there is no obligation for the Applicant to do so.

In my view, after hearing testimony from both parties, I am satisfied that the Applicant owned the property with B.C., and that B.C. shared the kitchen and/or bathroom of the property with the Respondents. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations where a tenant shares a bathroom or kitchen facilities with the owner of the accommodation. Consequently, I find that even if the parties had intended upon entering into a tenancy agreement prior to when B.C. passed, as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy. Therefore, I have no jurisdiction to render a Decision in this matter.

As there is no jurisdiction, and as the Applicant was not successful in obtaining an Order of Possession, I find that the Applicant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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: September 1, 2022

Residential Tenancy Branch