



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: OPL, FFL

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (“the Act”) for an Order of Possession for:

- Order of Possession for Landlord’s Use pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the applicant attended the hearing by way of conference call, the respondent did not. I waited until 9:42 a.m. to enable the respondent to participate in this scheduled hearing for 9:30 a.m. The applicant was given the full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the applicant and I were the only ones who had called into this teleconference.

The applicant testified that the respondent was personally served with the application package on December 24, 2022. The applicant included the signed proof of service in their evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find the respondent duly served with the hearing package.

Preliminary Issue: Do I Have Jurisdiction to Decide This Matter?

The applicant testified that they took sole ownership of the home from their ex-partner on November 1, 2022. The applicant provided supporting documents to show that the transfer of ownership was finalized. The applicant testified that the home is occupied by their stepson without their permission or authorization. The applicant testified that there is no rental agreement, verbal or written, between the parties, and that the occupant has not paid any rent to reside on the property.

The applicant testified that the occupant refuses to vacate the property, and the applicant attempted to serve them with a 2 Month Notice to End Tenancy for Landlord's Use on November 30, 2022, but the occupant has not vacated the home as of the hearing date.

The definitions of a "tenancy", "rental unit", and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

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

"tenancy agreement" means 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 license to occupy a rental unit.

"rental unit" means living accommodation rented or intended to be rented to a tenant;

The applicant provided undisputed evidence that the occupant, the applicant's stepson, is not a tenant, nor do they have the applicant's permission to occupy the property.

I am not satisfied that the relationship between the parties is a landlord and tenant relationship. I am unable to consider this application as I find that there is no tenancy agreement between the parties. The respondent is an occupant, and not a tenant under the definition of section 1 of the *Act*. On this basis, I cannot consider this application as I have no jurisdiction to hear or decide this matter.

Conclusion

I am not satisfied that a tenancy exists between the parties, and therefore the *Act* does not apply.

I decline to hear this dispute 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: April 27, 2023

Residential Tenancy Branch