

Residential Tenancies Tribunal

Application 2022-0851-NL

Decision 22-0851-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:09 a.m. on 25-October-2022.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “tenant1” attended by teleconference.
4. The tenant’s partner, [REDACTED], hereinafter referred to as “tenant2”, also attended by teleconference.

Preliminary Matters

5. The landlords submitted an affidavit (LL#01) stating that they had the tenant served personally on 13-October-2022. The tenant confirmed receipt of notification.

Issues before the Tribunal

6. The landlords are seeking
 - Vacant possession of the rental premises

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 3: Application of the Act, and Section 18: Notice of termination of rental agreement.

Issue 1: Vacant Possession of the Rental Premises

Landlord's Position

9. Landlord1 said that they have a written term rental agreement (LL#02) with the tenants beginning 01-August-2021 – 01-August-2031. The tenants pay \$800.00 per month for 10 years. There was no security deposit required. Landlord1 agrees that the agreement states “Rent to Own.”
10. Landlord2 said that on 01-June-2022 they emailed tenant1 and gave notice that they are voiding the “rent to own” agreement due to false and misleading information/fraud. They believe that, based on emails received from tenant1, that tenant2 does not reside at the property.
11. Landlord1 said that they would not have entered this agreement with tenant1 alone and that tenant2 was supposed to be part of the agreement.

Tenant's Position

12. Tenant2 questions why he is not included in the claim.
13. Tenant1 disputes that this is a landlord tenant issue. She points to the landlords' evidence of a “rent to own agreement” (LL#02) that has been signed by all parties.
14. Tenant1 states that she doesn't agree that tenant2 doesn't live at the residence. She states that he travels between their home and his father's home. She said she doesn't agree to end the “rent to own” agreement. She doesn't accept that the landlords can send an email and end the agreement that was signed by both parties.
15. Tenant1 said that she has continued to make her monthly payments in accordance with the agreement they signed.

Analysis

16. Before hearing the details of the claim for vacant possession, it must be determined if this application is within our jurisdiction.
17. Upon review of the contract signed by the parties, it is evident that they entered a signed agreement, whereby payments of \$800.00 a month would be credited for the purchase of the home. It is not clear that this agreement is void.
18. This Tribunal's jurisdiction is restricted to the administration of the *Residential Tenancies Act, 2018*. Section 3 of the Act states:

Application of Act

3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.

(2) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies to residential premises, residential complexes and rental agreements, whether made before or after this Act comes into force.

(3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant

- (a) uses or occupies residential premises and
 - (i) has paid or agreed to pay rent to the landlord, or
 - (ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;
- (b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or
- (c) has used or occupied residential premises and
 - (i) has paid or agreed to pay rent to the landlord, or
 - (ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

19. This Tribunal does not have jurisdiction over relationships that fall outside that of a landlord and tenant. "Rent" is defined in the Act as money paid for "use and occupation" only. The Act does not apply where money is paid for the purchase price of the property. This would include "rent to own" agreements, whereby the tenants come to have an equitable interest in the property. The agreement presented by the landlords, states that upon the payment of \$800.00 a month for a 10 year period, the tenant's will then own the property. The landlords may wish to end this agreement and enter a rental agreement, however, their evidence doesn't support that this new rental agreement exists or that the "rent to own agreement" is void.
20. This matter falls outside the jurisdiction of this Tribunal and the applicant's claim is dismissed.

Summary of Decision

21. This matter falls outside the jurisdiction of Residential Tenancies Tribunal.
22. This application is dismissed.

October 26, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office