

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: OPT, MNDC, AAT, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by the parties prior to the Hearing. Both parties gave affirmed evidence and this Hearing proceeded on its merits.

Issue(s) to be Decided

This is the Applicant/Tenant’s application for an Order of Possession; a Monetary Order for compensation for damage or loss; an Order that the Respondent/Landlord allow access to the unit for the Applicant/Tenant; and to recover the filing fee for the cost of the application from the Respondent/Landlord.

- (1) Is the Applicant/Tenant a tenant and party to a tenancy agreement with the Respondent/Landlord?
- (2) Is the Applicant/Tenant entitled to an Order of Possession?
- (3) Is the Applicant/Tenant entitled to a Monetary Order and to recover the filing fee from the Respondent/Landlord?

Background and Evidence

Applicant/Tenant's evidence and testimony

The Applicant/Tenant testified that he lived in the rental property for 17 years, with his common-law spouse of 23 years (Mrs. W). The Applicant/Tenant testified that Mrs. W died on April 6, 2009. The Applicant/Tenant testified that he is a co-tenant, even though he did not sign a tenancy agreement, and that this was a fact that was known to the Respondent/Landlord. The Applicant/Tenant testified that he painted suites for the Respondent/Landlord and therefore the Respondent/Landlord knew he was living there. The Applicant/Tenant testified that Mrs. W paid the security deposit for the rental unit and was responsible for paying the rent.

The Applicant/Tenant testified that after Mrs. W. died, he was asked to leave the rental unit by Mrs. W's son. The Applicant/Tenant testified that he left some possessions at the rental property, some of which he believes were thrown away by the Respondent/Landlord's agent. The Applicant/Tenant testified his truck remains at the rental property and that there were some items left in the storage locker, workshop and furnace room. The Applicant/Tenant applied for compensation to replace the items he left at the rental unit. The Applicant/Tenant provided a list of items and their alleged value, for a total of \$4,061.00.

Applicant/Tenant's Witness's testimony

The Applicant/Tenant's Witness gave the following affirmed testimony:

- The Witness has known the Applicant/Tenant for 3 years.
- The Applicant/Tenant has lived in the rental unit for as long as the Witness has known him.
- The Witness helped the Applicant/Tenant to move some of his belongings out of the rental unit when he vacated the rental unit.

Respondent/Landlord's Evidence and Testimony

The Respondent/Landlord testified that the Applicant/Tenant is not a party to a tenancy agreement with the Respondent/Landlord. The Respondent/Landlord testified that the monthly rent was never paid by the Applicant/Tenant, but by Mrs. W, who had lived at the rental property since December, 1988, and has managed the rental property since the previous manager retired, in June of 2005.

The Respondent/Landlord provided a written statement into evidence, which attests as follows:

- The rental unit is a one bedroom apartment.
- The subject rental unit's 'application to rent' names Mrs. W and her granddaughter as the only occupants of the rental unit.
- The Respondent/Landlord requires all proposed residents to appear on an application to rent, and any change in tenancy must be approved in writing and a new written agreement entered into.
- The Respondent/Landlord first became aware of the Applicant/Tenant's presence in the rental unit when he was visiting Mrs. W in February or March of 2009. The Applicant/Tenant was not introduced as Mrs. W's spouse and the Respondent/Landlord assumed he was a guest. The Applicant/Tenant did not advise the Respondent/Landlord that he wished to become a permanent resident or that he regarded himself as a tenant.

The Respondent/Landlord testified that after Mrs. W died, her daughter-in-law became manager of the rental unit. The Respondent/Landlord's agent, the then manager, signed the Tenancy Agreement on behalf of the Respondent/Landlord when Mrs. W entered into the Tenancy Agreement in 1988, and the manager kept the Respondent/Landlord's copy of the Tenancy Agreement. The current manager, Mrs. W's daughter-in-law, has not been able to locate the Tenancy Agreement among Mrs.

W's effects. The daughter-in-law was present at the Hearing, as the Respondent/Landlord's agent, and testified that she did not recognize a familial relationship between herself and the Applicant/Tenant, or between the Applicant/Tenant and Mrs. W.

The Respondent/Landlord provided a copy of Mrs. W's T4 for 2008, which does not name the Applicant/Tenant as a common-law spouse.

The Respondent/Landlord's agent denied that any of the Tenant/Applicant's belongings were disposed of and stated that the Tenant/Applicant was welcome to pick up his belongings.

Analysis

It is the responsibility of the Applicant/Tenant to substantiate his claim. The Applicant/Tenant claims to be a co-tenant under a tenancy agreement. If there is no written agreement, a person who makes a verbal agreement with a landlord to rent a property and pays the rent is a tenant. In this case, the Applicant/Tenant did not sign a written agreement with the Respondent/Landlord, and did not pay rent to the Respondent/Landlord. I find there was no verbal tenancy agreement between the Applicant/Tenant and the Respondent/Landlord. Instead, I find that the Applicant/Tenant was an occupant of the rental unit. An occupant has no rights or obligations under a tenancy agreement.

Therefore, the Applicant/Tenant's application for an Order of Possession is dismissed without leave to re-apply.

The Applicant/Tenant has not proven his claim for damages and this portion of his application is dismissed without leave to re-apply.

The Respondent/Landlord has given consent to the Applicant/Tenant to retrieve his belongings from the rental property.

The Applicant/Tenant has not been successful in his application and is not entitled to recover the cost of the filing fee from the Respondent/Landlord.

Conclusion

The Applicant/Tenant's application is dismissed without leave to re-apply.

June 10, 2009
