

## **DECISION**

Dispute Codes      FF, MNDC, OPT, SS

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This is a request for a monetary order and an Order of Possession however before dealing with the application I first dealt with the question of jurisdiction.

### Background and Evidence

The respondent argued that:

- There has never been any tenancy agreement between the parties.
- Although the applicants have occupied property they have never paid rent, nor has there ever been any agreement regarding rent.
- There was never any agreement that the applicants would do work on the property in lieu of rent.
- Any work done on the property by the applicants was done of their own accord and not under any agreement with the owners.
- They never agreed to rent the property because this property was to be for the use of family and friends.
- The applicants have lived on this property for over a year and have not been asked to pay any rent, and now when the owners want to access the property for their own use the applicants are suddenly claiming that they are tenants and are attempting to pay rent.
- We have not accepted any rent from the applicants, because this is not a residential tenancy.

The applicants testified that:

- They had a verbal agreement with the respondent to rent the property for 3 years.
- The respondent also agreed to one year free rent in exchange for work being done on the property.
- The respondent further agreed that at the end of that year they would have to pay rent of approximately the cost of taxes.
- The respondent discussed the amount of approximately \$500.00 per month after the first year.
- They have attempted to pay \$500.00 starting July 2010; however the respondents have refused to cash the cheque.
- They would not have done so much work on the property to fix it up, if they did not have a tenancy agreement with the respondent.

In response to the applicant's testimony the respondent testified that:

- This is waterfront property worth in excess of a million dollars and if they had entered into a rental agreement, they would certainly have asked for far more than the applicants are claiming that they were supposed to pay for rent.
- The applicants occupied this property rent free and if they fix up the property it was for their own comfort and not because of any agreement to do work in lieu of rent.
- They have not cash the cheques sent by the applicants, because there is no tenancy agreement, and they have not agreed to accept rent.

### Analysis

It is my decision that the applicants have not met the burden of proving that there is any tenancy agreement in place.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Although the applicants have occupied the rental unit for over a year, they have not paid any rent, they have not paid any security deposit, there is no written tenancy agreement, nor have they proven that there was any agreement to do work in exchange for rent.

The Residential Tenancy Act only has jurisdiction over residential tenancy agreements and since the applicants have failed to establish that there is a tenancy agreement, it is my decision that the Residential Tenancy Act has no jurisdiction over this matter.

Conclusion

I declined jurisdiction over this matter and will not hear the merits of the claim.

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: July 27, 2010.

---

Dispute Resolution Officer