



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, OLC, FF

Introduction

This hearing dealt with the tenant/applicant's Application for Dispute Resolution seeking an order for the landlord/respondent to comply with the Residential Tenancy Act (the "Act"), for an order reducing the rent and to recover the filing fee.

The tenant/applicant, landlord/respondent and his representatives and witness appeared, were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

At the outset of the hearing I questioned the parties about the specifics of the alleged tenancy, with the caution that the Residential Tenancy Act may not apply to their dispute due to a lack of jurisdiction.

The landlord/respondent also suggested that the Act did not apply in this situation.

I proceeded to hear from the parties to make a determination of jurisdiction and in the event I found jurisdiction, to make a Decision.

Issue(s) to be Decided

1. Does the *Residential Tenancy Act* apply to this dispute and do I have jurisdiction to resolve this dispute?
2. Has the applicant established an entitlement to an Order for the landlord/respondent's requirement to comply with the Act, reducing the rent and to recover the filing fee?

Background and Evidence

There is no written tenancy agreement or consensus from the parties that a tenancy exists.

I heard testimony that the landlord/respondent owns the building containing the rental unit and that another person, the witness appearing at the hearing, rented the premises from the landlord/respondent.

The tenant/applicant testified to the following:

That beginning in 2007, he began visiting the witness and suggested that the electrical panel required replacing, which he began so doing at that time. That the landlord/respondent, in 2008, arranged with the tenant/applicant to re-wire the entire house and renovate the basement, and that the parties agreed that to complete the job, he, the tenant/applicant, would live in the basement rent-free for five years. This agreement proves that there is a landlord/respondent-tenant/applicant relationship between the parties.

The tenant/applicant performed the work, paid for the material and labour necessary to renovate the basement and moved into the rental unit in March 2010, and that there were no problems for the first few months.

The landlord/respondent is the person asking him for rent which further proves there is a tenancy agreement.

The tenant/applicant supplied receipts from home improvement stores, photos of the rental unit, a letter from the witness, which mentions issues with the tenant/applicant in the rental unit, an unsigned and undated document referencing the tenant/applicant's repair of certain items in the rental unit, a labour billing statement totalling \$36,096.00 and an expense report spread sheet.

The landlord/respondent's representative's testified to the following:

The representative is the landlord/respondent's son.

The landlord/respondent has no tenancy relationship with the tenant/applicant, but that the tenant/applicant is subletting from the witness. The tenant/applicant was given authority for a limited amount of work, but that he exceeded that authority. That the witness was given permission to sublet the basement, but nothing in that regard was in writing. The witness' rent increased due to the extra person residing in the rental property.

The witness testified to the following:

That the tenant/applicant is subleasing from him, the witness residing in the upper unit, but that the tenant/applicant was receiving no rent or money for utilities, and that he was not privy to the meeting between the landlord/respondent and the tenant/applicant.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In order for the applicant to succeed in this application, the applicant must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord/respondent and tenant/applicant relationship.

The three basic tenets used to determine if a contract has been entered into include: capacity, consensus and consideration. In this case neither party presented evidence or testimony questioning the other party's capacity; as such I make no findings on capacity.

I find the evidence submitted by the applicant/tenant/applicant and the disputed verbal testimony of the parties fails to prove that there was financial consideration.

In relation to the matter of consensus, if the consensus is found in written form it is evident; however, in the case of verbal agreements when the parties, after the fact, disagree with what was agreed-upon, it is virtually impossible for a third party to interpret whether consensus was reached.

When the evidence required to establish a tenancy consists of conflicting and disputed verbal testimony and evidence, then it is virtually impossible for a third party to establish facts and the claim fails.

Further, I do not find the photographic and receipt evidence of the applicant/tenant/applicant proves a landlord/respondent/tenant/applicant relationship.

Residential Tenancy Policy Guideline 27 states that Residential Tenancy Branch does not have the authority to hear all disputes regarding every type of relationship between two or more parties. The jurisdiction conferred by the Legislation is over landlord/respondents, tenant/applicants and strata corporations.

I cannot find on a balance of probabilities that the applicant and respondent had entered into a landlord/respondent-tenant/applicant relationship. The nature of the dispute appears to be more of a contract for services and therefore, not within the jurisdiction of the Residential Tenancy Act.

I therefore decline to find jurisdiction to resolve this dispute.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

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: June 30, 2011.

Residential Tenancy Branch