



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, OPT, RPP, MNR, MNDC, LRE, LAT

Introduction

This was the second reconvened hearing dealing with the applicant's Application for Dispute Resolution for various remedies under the Residential Tenancy Act (the "Act"), including requesting an order of possession to the rental unit, a request for a monetary order for the cost of emergency repairs and for money owed or compensation for damage or loss, an order requiring the respondent to make emergency repairs, to return the applicant's personal property, and suspending or setting conditions on the respondent's right to enter the rental unit, and authorizing the applicant to change the locks to the rental unit.

All three hearings dealt with the respondent's contention that the Residential Tenancy Act (the "Act") did not apply to this dispute.

This should be read in conjunction with my Interim Decisions and Reasons of November 14, and December 7, 2011.

In my second Interim Decision the hearing was adjourned due to the length of the testimony and dealt only with the issue of jurisdiction.

At this second reconvened hearing, the respondent concluded cross examination of the applicant's witness, MA, and the applicant testified on his own behalf in support of his contention that the Residential Tenancy Act (the "Act") applied to this dispute.

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 for the various requests made on his application listed above?

Background and Evidence

I heard testimony that the residential property in question was on the lower level of a home owned by the respondent. The respondent contended that the lower level contained one unit and the applicant contended that the lower level was split into two separate rental units.

In support of her contention that there was no tenancy agreement between the parties and that the Residential Tenancy Act did not apply to this dispute, the landlord stated she was prohibited from having tenants in a secondary suite, due to a municipal by-law and a court order. As a result, she required her tenant, witness JE, to move from the lower part of the premises into another one of her rental properties. The respondent stated that the witness, JE, caused the applicant to be on the premises as he, JE, asked that the applicant assist him in cleaning the rental unit, which was dirty and in need of repair after a 17 year tenancy.

The respondent stated that she did not know of the arrangements between JE and the applicant, but contended that she never allowed the tenant to occupy the residential property. The respondent also contended that there has never been a final inspection of the premises due to the state of the residential property left by the long term tenancy of JE.

The respondent stated that she felt sorry for the applicant and bargained to pay him for certain tasks he performed for her, both in her rental properties and at her medical office. The respondent stated that she has made numerous payments to the applicant, but that he has never made any payments to her. The respondent contended that as of dates of the hearing, the applicant owed her money.

The respondent further stated that she forbade the applicant to live in the residential property, and that when she discovered he was staying there after his changing of the lock, and that he had moved his parent's furniture into the property, she took steps to have him removed.

The respondent contended that she was in fear of the applicant and that he was under court order to stay away from her due to charges against him.

Witness, WW, stated that he became aware of the presence of the applicant being at the residential property sometime in September 2011 and stated that the respondent was afraid of the applicant. Due to this, WW stated that he made the respondent attend the local RCMP office to make a statement.

Thereafter, the police attended the residential property and escorted the applicant from the premises when he could not produce proof of a tenancy.

Witness LB testified on behalf of the respondent that she was aware that JE hired the applicant to clean his rental unit. She also testified that the applicant's witness, MA, her cousin, phoned the applicant repeatedly and informed him he could not stay at the residential property.

Witness, JE, testified he was a long term tenant of the respondent, and that when he was informed he had to move from the premises due to the court order, he hired the respondent to clean the premises. JE stated that he did give the respondent a sleeping bag, but was not aware of any sleeping arrangements and that he did not give him access to the rental unit. JE submitted that the applicant was never a tenant of the respondent and never had any belongings of which he was aware.

The respondent's witness DK stated that the applicant was a squatter, that the respondent was having problems removing him from the premises, and that she, the witness, never observed any improvements in the property.

In support of the applicant's contention that the parties had a tenancy agreement, his witness, MA, stated she came to know the respondent through her cousin, LB. Thereafter she began working for the respondent on her properties and in her medical office.

MA submitted that the parties had a tenancy agreement for the residential property in question, the terms of which included monthly rent of \$600.00, which would include cash or work in lieu of rent. MA stated that she was present at the office meeting and the restaurant meeting with the parties, when these terms were discussed. MA stated that the hourly rate for the respondent's work was between \$12.00 and \$35.00 per hour, depending on the "yuckiness" of the work.

MA submitted that the day of the meeting in the restaurant was on May 30, 2011, but upon query acknowledged that she did not have her appointment book with her on the day of the hearing. I note on the second day of testimony by MA, she again did not bring her appointment book for questioning by the respondent.

I further noted that the respondent denied meeting the applicant and MA at a restaurant and that there was never a meeting to discuss any financial terms regarding a tenancy agreement.

The applicant testified that he was a previous tenant of the respondent in another property, and that she allowed him to continue his tenancy at the residential property in question due to his fear of his relative at the original property.

The applicant submitted that he worked for the respondent in any capacity she required of him for her various properties and her medical office.

The applicant stated that his arrangement with the respondent was a 60/40 agreement, meaning that he would receive 40% of the proceeds and the respondent would keep 60% of the proceeds.

The applicant stated that he became aware of the existence of the court order preventing the respondent from having tenants in a secondary suite by talking to by-law officers. The applicant submitted that he was told by the respondent not to say that he was living there, but rather house sitting. The applicant stated he had no problem with this denial as the residential property was a million dollar property and that he was getting a "smoking deal."

The applicant stated that eventually he began working for the respondent less and less and working for others more and more.

As such, the applicant submitted that on one occasion in the summer of 2011, he paid the respondent \$500.00 in cash, through a friend of the respondent. The respondent also submitted that he paid his own utility bills and that he was entitled to move his parent's furniture into the residential property as he was renting.

The applicant stated that the respondent had him arrested in October 2011, and then broke into the residential property, changed the locks, stole his papers, including bank records, rent receipts, work logs and pawn tickets, and vandalized his property. The applicant testified that the arresting officer stated to him that it did not appear to him that the tenant was squatting. Upon query, the applicant stated that he was given a file number by the RCMP, but that he had not made contact yet.

The applicant stated that the respondent mentioned a written tenancy agreement, but that he never followed through with it.

Upon query, the tenant stated that he received receipts and had documentation proving a tenancy, but could not produce any documentation as the applicant stole all his papers in the residential property when she had him arrested.

In response, the respondent denied ever receiving any money from the applicant and that he owed her money for all the payments she has given him.

In support of his application, the applicant submitted statements from several individuals, including friends and neighbours of the residential property, a statement from witness, MA, the court order regarding the municipal bylaw infraction for a secondary suite, and photos.

Upon query, the applicant stated that after he was released from prison the night he was arrested, he discovered the locks had been changed. However, the applicant stated that he knew of another way into the residential property from JE's side, entered the residential property and took photos both of the residential property and of his van. The applicant stated that the photos proved he resided at the property, that the respondent stole papers and vandalized his property.

I also note that I inquired of the applicant as to when he thought the terms of the alleged tenancy would end, and he stated that he could leave anytime he wanted to. I also note that the applicant later amended this statement by saying he could leave upon proper notice.

Analysis

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

Both parties submitted an extensive amount of evidence and testimony continued on three different hearing days. While it is not possible to refer to all evidence and testimony, all such relevant evidence and testimony was duly considered.

In order for the applicant/tenant to succeed in this application, the applicant/tenant 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 and tenant relationship.

The three basic tenets used to determine if a contract has been entered into include: capacity, consensus and consideration. In this case there was no evidence or testimony presented questioning the other party's capacity; as such I make no findings on capacity.

I find the evidence and testimony submitted by the applicant/tenant fails to prove that there was financial consideration. For instance the applicant failed to prove that he paid a security deposit and provided insufficient proof that he paid rent or provided services in lieu of rent. As such I can find no evidence of 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, I find it is virtually impossible for a third party to interpret whether consensus was reached and the claim fails.

Residential Tenancy Policy Guideline 27 states that the 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 landlords, tenants and strata corporations.

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

In reaching this conclusion, the respondent denied that a landlord-tenant relationship existed and that the applicant was “squatting” on the property. Afterwards, I relied on the absence of evidence from the applicant/tenant establishing a tenancy. The applicant failed to produce any documentation that he had ever paid rent or utilities or worked in lieu of paying rent and failed to submit sufficient proof of his allegation that the respondent removed the documents.

In another instance, the applicant produced photographs of the residential property following what he characterized as a break-in by the respondent; however I took particular note that the photographs did not show that the applicant had bedroom, living room, dining room or other type furniture in the residential property which would indicate that he had been living as a tenant in that property.

I was further persuaded by the applicant’s response that he could leave the property anytime he wanted to leave and his amended statement about having to give proper notice lacked credibility.

I also was persuaded by the testimony and evidence of the respondent, who I found had taken meticulous notes in her daybook regarding appointments and meetings and I found her testimony credible that she did not meet with the applicant and his witness at

the restaurant on the day in question to confirm a tenancy, as testified to by the applicant and his witness.

Due to the above, on a balance of probabilities, I find that the respondent did not allow occupancy of the residential property, that she took steps to have the applicant removed from the residential property upon learning of his attempts to move in furniture and did not receive rent or work in lieu of rent.

As a result, I find upon a balance of probabilities that a tenancy agreement did not exist between the parties and 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: January 09, 2012.

Residential Tenancy Branch