



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RPP, LRE, OPT, LAT, FF

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution seeking an order of possession; a monetary order; an order to have the respondent comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; an order to have the respondent return the applicant's personal property; an order to restrict or set conditions on the respondent's right to enter the unit; and an order to allow the applicant to change locks.

The hearing was conducted via teleconference and was attended by the applicant, her advocate, her witness and two agents for the respondent.

At the outset of the hearing the applicant amended her Application to exclude the matters related to an order of possession; authorizing the applicant the change locks to the rental unit and suspend or set conditions on the respondent's right to enter the rental unit.

Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to a monetary order for compensation for damage or loss; to an order to have the respondent comply with the *Act*, regulation or tenancy agreement; to an order to have the respondent return the applicant's personal property; and to recover the filing fee from the respondent for the cost of the Application for Dispute Resolution, pursuant to Sections 16, 67, and 72 of the *Act*.

As a preliminary matter I must first determine if there is jurisdiction on these issues pursuant to Section 4 of the *Act*.

Background and Evidence

The parties agree that on or about October 20, 2011 the respondent answered an ad in a local newspaper placed by the applicant who was seeking living accommodation. The

respondent testified that she was seeking a living arrangement that would allow for her elderly mother to have someone who would assist with her mother's daily chores such as meal preparation and to generally keep an eye on her mother while living in a basement bedroom.

The applicant testified that she was only looking for a rental unit so that she could get her and her daughter away from the current housing they were in which she felt was not a suitable environment for either her or her daughter. She went on to testify that she accepted the arrangement to move into the basement rental unit and that, if in the future, the respondent need some assistance she would be able to provide it as it would be similar to volunteer work she does at the local hospice.

On or about October 3, 2011 the parties signed a copy of a Residential Tenancy Branch (RTB) tenancy agreement for the rental of a basement room beginning on November 4, 2011 as a month to month tenancy for rent of \$500.00 per month due on the 4th of each month, no security deposit was required. Neither party provided testimony regarding any payment of monies for rent in consideration of this agreement.

The respondent asserts that the only reason they filled out the tenancy agreement was that the applicant told them that she needed the tenancy agreement so that she could have moving costs paid for through the Ministry of Social Development (MSD). The applicant provided no testimony to dispute this, however did point out that the tenancy agreement is in the handwriting of the respondent.

The applicant testified that she was slowly moving her belongings over to the unit up to her attempts to continue to move boxes in on November 8, 2011 when she was told by the respondent that they were no longer able to rent to her. In her Application, the applicant indicates the respondent gave no reasons other than "we've decided not to rent out the suite" but in the hearing she agreed the respondent had indicated they had an illegal suite and they were not allowed to rent it out.

The applicant asserts that as a result she ended up having to give temporary custody of her 16 year old daughter to her daughter's father; that she has been homeless since and had just secured a permanent location as of the hearing date.

The applicant testified that she had until November 15, 2011 to vacate from her previous rental unit and that her tenancy was ending because of a dispute between her and her previous landlord over the non- payment of rent. The applicant testified that she could have stayed in this accommodation if she just worked out a payment schedule but she would not accept as she felt she had already paid the rent in question.

The respondent testified that on November 8, 2011 she learned from a local bylaw enforcement officer that they did not have a legal rental unit according to local bylaws and that they would not be granted a permit to construct one as the area is zoned for single family dwellings only. As a result of this discussion the respondent determined they could not rent out any accommodation to anyone outside of their own family and informed the applicant of such.

Both parties confirmed that the applicant has removed some belongings over the course of 4 visits up to and including December 18, 2011 but still has approximately 93 boxes in the respondent's house.

During the hearing the respondent indicated that they would gladly give the applicant's possessions back if she would just come and take them. In addition the respondent stated that they had offered, and they stand by this offer, to pay for movers to move the applicant's belongings. The applicant found the offer to be an insult to her reputation.

As to the accommodations themselves, the applicant asserts there is a bathroom in the basement with a toilet and shower; on the other side of the wall from the bathroom there is a fridge, laundry sink, a place for a hotplate; that there is a separate entrance; and a spiral staircase the separates the rental area from the respondent's area. The applicant testified that the respondent was going to allow her to use a hotplate and that she was specifically prohibited from using the kitchen and bathroom upstairs.

The applicant's witness confirmed there was a shower and toilet in the bathroom but she could not remember a sink; that there was a fridge; big sink; counter space and a washer and dryer in the back of the unit. She further testified that she did remember the spiral staircase but she could not remember if there was a door at the top of the stairs or a gate but she did remember that it was very "private" from the rest of the house.

The respondent testified that there was indeed a toilet (next to the hot water tank) and a shower in the area accessible by the applicant but that the area by the fridge was the laundry room and was a completely separate part of the house. The respondent testified the whole intention of the living arrangement was for the applicant to prepare all meals for and with the respondent.

Analysis

As noted above, I must first determine if I have jurisdiction to determine the matters in this dispute. However, as noted in the hearing, both parties appear to agree that the

applicant can pick up her belongings and as such I encourage the parties to make an appointment for the applicant to recover her belongings and that they should do so at the earliest convenience of both parties and that it should be completed all at once.

Section 4 of the *Act* stipulates that the *Residential Tenancy Act* does not apply to, among other circumstances, living accommodation in which the applicant shares bathroom or kitchen facilities with the owner of that accommodation.

With the exception of one photograph submitted by the respondent showing only a toilet in the basement, there is no documentary evidence to support either the respondent's or the applicant's version of the accommodation. As such, I find I must rely on the testimony of both parties.

In general terms, I find the applicant's testimony to be unreliable for the following reasons:

1. The applicant's version of reasons she was given by the respondent for not starting the arrangement differs substantially from her written submission to her testimony;
2. The applicant provided two versions of why her old tenancy was ending – first that she wanted to move as the environment was not good (drugs) and second that she was in a dispute over unpaid rent with her previous landlord;
3. Despite the applicant's testimony that she was immediately rendered homeless and had to immediately find accommodation for her daughter on November 8, 2011 because of the respondent's actions is contradictory to her testimony that she had until November 15, 2011 to vacate her previous tenancy;
4. Further to her previous tenancy, by her own testimony the applicant indicates that she could have continued that previous tenancy if she had chosen to do so; and
5. As noted above and while I accept the tenancy agreement was in the respondent's handwriting, the applicant did not dispute the respondent's testimony that it was the applicant who approached the respondent to have the tenancy agreement completed and written in the format provided.

As a result, I prefer the respondent's evidence and testimony and I make the following findings:

- The intent of the living arrangement was for the purposes of providing assistance to the respondent with her daily chores including meal preparation and other tasks;
- The residential property has only one kitchen and that the area identified by the applicant that has a fridge and laundry sink is actually a laundry room (not a kitchen) with a secondary fridge.

- The living arrangement included the use of, at the very least, the kitchen facilities in the main area of the residential property; and
- The tenancy agreement used by the parties, as a record of the arrangement, specifically indicated it was for the rental of a single room and not that of a rental suite including a bathroom and kitchen.

Conclusion

For these reasons, I decline jurisdiction on all of the matters raised in this Application.

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: February 14, 2012.

Residential Tenancy Branch