



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the respondent comply with the *Residential Tenancy Act (Act)*, regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by both applicants; the respondent and her legal counsel.

In their written submission and verbal testimony the respondent requested an order of possession pursuant to Section 55 of the *Act*. Section 55 states if a tenant makes an Application for Dispute Resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession to the landlord if, the landlord makes an oral request for an order of possession and the director dismisses the tenant's Application or upholds the landlord's notice.

I note the applicants have not filed an Application for Dispute Resolution seeking to dispute a notice to end tenancy issued by the respondent and as such, there is no authority under Section 55 to grant an order of possession for the respondent should this Application be dismissed.

Issue(s) to be Decided

The issues to be decided are whether the applicants are entitled to an order to have the respondent comply with the *Act*, regulation or tenancy agreement; to have the respondent provide a copy of a tenancy agreement; to suspend or set conditions on the respondent's right to enter the rental unit and to recover the filing fee from the respondent for the cost of the Application for Dispute Resolution, pursuant to Sections 1, 4, 28, 29, 67, and 72 of the *Act*.

Background and Evidence

The parties agree they had reached an agreement for the applicants to move into the property owned by the landlord in August 2012 and at that time the female respondent was living in the property. There is a familial connection between the parties.

The applicants submit that the female respondent had intended to move to Alberta to work but did not want to sell the property and so asked them to move into the property. They state that they signed a standard tenancy agreement but have never received a copy of it. The respondent agrees such an agreement was put forward by them to appease the applicants, however it had been placed on the mantel and never seen since.

The applicants also submit that all utilities were placed in the tenants' names and the plan was for the female respondent to move to Alberta sometime within a couple of weeks after the applicants moved into the rental unit in August 2012. The applicants also submit they had a verbal agreement with the female respondent that for every month that she remained in the unit after the end of August 2012 she would compensate them in the amount of \$500.00.

The female respondent submits that moving to Alberta was a possibility she was considering as she had recently broken up with her spouse but that she had not decided anything definitely. The respondent goes on to say that she later reconciled with her spouse and started "staying over" in the marital home in another community in mid December 2012.

The respondent states that she has left her clothing and day to day items in the property occupied by the applicants and she has stayed in that property on occasion. The respondent submits she has stayed in the property for strata meetings and at the end of March 2013 or beginning of April 2013 prior to a trip. The applicants submit the respondent as only stayed in the property once since December.

On this issue the respondent's written submission outlines as follows:

- The respondent returned to her residence in another community in late December 2012 after leaving her employment.....to begin renovations;
- Since returning to the other community, the respondent returns to reside at the residence for strata meetings with her husband;
- The respondent resided in the residence around the end of March 2013 before leaving for her trip to Mexico on 02 April 2013.

The respondent's position is that the parties are roommates and that the respondent still shares the property with the applicants including the use of the bathrooms and kitchen facilities. As such, the respondents submit the *Act* has no jurisdiction over the agreements or parties.

The applicants submit the respondent has, since moving out of the property, repeatedly entered the rental unit without advising the applicants of her intention to do so. They also submit the respondent, on April 26, 2013 picked up some of her belongings from the garage and advised the applicants they will have to vacate the property by August 1, 2013.

Analysis

Section 4 of the *Act* states this Act does not apply to:

- a) Living accommodation rented by a not for profit housing cooperative to a member of the cooperative;
- b) Living accommodation owned or operated by an educational institution and provided by that institution to its students or employees;
- c) Living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation;
- d) Living accommodation included with premises that
 - a. Are primarily occupied for business purposes, and
 - b. Are rented under a single agreement;
- e) Living accommodation occupied as vacation or travel accommodation;
- f) Living accommodation provided for emergency shelter or transitional housing;
- g) Living accommodation
 - a. In a community care facility under the *Community Care and Assisted Living Act*;
 - b. In a continuing care facility under the *Continuing Care Act*;
 - c. In a public or private hospital under the *Hospital Act*;
 - d. If designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit;
 - e. In a housing based health facility that provides hospitality support services and personal health care or;
 - f. That is made available in the course of providing rehabilitative or therapeutic services;
- h) Living accommodation in a correctional institution;
- i) Living accommodation rented under a tenancy agreement that has a term longer than 20 years;
- j) Tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies or;
- k) Prescribed tenancy agreements, rental units or residential property.

Relevant to the case before me is Section 4(c) regarding living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

However, based on the evidence and testimony before me I accept that when the applicants moved into the residential property the female respondent was also living

there and the parties shared use of bathrooms and the kitchen facilities. As such, at that time I agree the *Act* did not apply.

I find the submissions related to what the female respondent's plans were at the time the parties entered into this agreement are really not relevant to the matters before me with the exception of a couple of key points, as follows:

1. The respondent had initially prepared a copy of tenancy agreement obtained from the *Residential Tenancy Branch* outlining the terms of the agreement; and
2. The utilities have been placed in the applicant's names.

From these key factors, I find, based on the balance of probabilities that the respondent intended, at some point, to vacate the property and leave the applicants living there on their own.

More importantly, however, I find the female respondent vacated the property in December 2012 and I am not convinced that the female respondent currently lives in the property. Rather, I find that her primary residence is the marital home and that she has used this property as a place to "stay over".

Despite the respondent's claim that there is no tenancy agreement, I find that there is in fact an agreement between the parties for use of the property in consideration of a monthly rent of \$1,500.00 and as such there is a verbal tenancy agreement.

For these reasons, I find a tenancy exists, I accept jurisdiction, and I order that both parties; **applicant tenants** and **respondent landlords** comply with the provisions of the *Act* and regulations, specifically:

I order the landlords to provide the tenants with a copy of a written tenancy agreement in accordance with Section 13 of the *Act* within 21 days of receipt of this decision.

I order the tenants are required to pay rent when it is due and in full, pursuant to Section 26 which stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

I order the landlords to provide the tenants with quiet enjoyment of the rental unit, pursuant Section 28 of the *Act* that requires the landlord to ensure the tenants are provided with, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

I order the landlords provide the tenants with notice to enter the rental unit in accordance with Section 29 which states a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;
- b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering and the date and time of the entry;
- c) The landlord provides housekeeping or related services under the tenancy agreement and the entry is required for those purposes;
- d) The landlord has an order of the director authorizing the entry;
- e) The tenant has abandoned the rental unit;
- f) An emergency exists and the entry is necessary to protect life or property.

I order the tenants may not impede the landlords' access to the rental unit as long as the landlord has complied with Section 29 of the *Act* to gain access to the rental unit and that the tenants may not block access or change locks or access codes, pursuant to Section 31 of the *Act*.

I order that if either the landlords or the tenants seek to end the tenancy they must do so in accordance with the requirements and obligations set out in Part 4, Division 1 of the *Act*.

Conclusion

As the tenants were successful in their Application I grant they are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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 29, 2013

Residential Tenancy Branch

