



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damage or loss under the Act.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary issue

At the outset of the hearing the respondents questioned whether the Residential Tenancy Branch has jurisdiction over this matter.

Issues to be decided

Does the Residential Tenancy Act apply to this dispute and if so, is the tenant entitled to compensation?

Background and Evidence

The respondents stated that in March 2012, they were informed by the department of national defense that they were being transferred to another province. The respondents stated that they were unable to sell their home prior to the transfer taking place in April 2012, and their home remained vacant while listed on the real estate market.

The respondents stated in March 2013, they received distress communication from the applicant who they considered a close family friend and they were concerned for her safety, so they allowed her move into their vacant home on a temporary basis as the house was still on the real estate market a year later.

The respondents stated they never entered into a tenancy agreement either written or verbal with the applicant. The respondents stated the applicant was not required to pay rent and did not pay any other expenses, such as utilities while she resided in their home. The respondents stated that she was merely allowed to stay because of their generosity as she was a close family friend.

The applicant stated that she does not deny it was because of their generosity that she was allowed to move-in to their residence. The tenant stated that she did not pay rent, or a security deposit or any of utilities while she resided on the premises. The tenant stated rent was in lieu of her making repairs.

The respondents argued that there was no agreement for any exchange of work as the home was in good condition.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I prefer the evidence of the respondents over the applicant for the following reasons,

Under the Act, if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created.

However, In this case the applicant did not pay rent, or a security deposit or any utilities while she resided in the respondents' home. The applicant was a close family friend, which was having difficulties at the time when the respondents out of their generosity, provided her with a temporary safe place to reside.

While the applicant had alleged there was a contract that she would receive free rent in exchange for making repair, however, the applicant's application filed for today's hearing contradicts her testimony as her application seeks compensation for making repairs. I find that applicant has failed to prove a tenancy existed between the parties.

Therefore, I find the Residential Tenancy Act does not apply. The applicant's application is dismissed due to lack of jurisdiction.

Conclusion

The applicant's application is dismissed due to lack of 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: February 04, 2014

Residential Tenancy Branch

