



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, O

Introduction

The applicant, claiming to be a tenant, seeks an order of possession for the premises. At the first hearing she was permitted to amend her claim to include a claim for damages.

Issue(s) to be Decided

The respondent claims the relationship between the parties is not governed by the *Residential Tenancy Act* in that the applicant is not a tenant and he is not a landlord.

Background and Evidence

The rental unit is an older two bedroom house on a city lot. The owner passed away some time ago. The applicant was the owner's "step granddaughter." The respondent Mr. H. was the owner's stepson. At the first hearing the applicant Ms. S. indicated that in his will the late owner left the house to Mr. H. and to her daughter Ms. M.W.. On the third hearing day it appeared that perhaps the house was simply a part of the residue and had not been devised to anyone in particular.

Unfortunately, the executor named in the will died and his replacement renounced his right to administer the will. It appears that the respondent Mr. H. and the applicant's daughter Ms. M.W. have taken charge and are, possibly through the legal services of Mr. Marrie, attempting to resolve the matter. Letters of administration with will annexed have not yet been granted.

Nevertheless, the late owner's house was sitting empty and in the fall of 2013 the applicant Ms. S. agreed with the respondent Mr. H. and with Ms. S.'s daughter Ms. M.W. that Ms. S. would move into the furnished house and look after the home pending the estate resolution and sale. It would keep the home safe and insurance costs would be less if the home was occupied. There was no agreement that the applicant Ms. S. would be otherwise compensated and there was no agreement that she would pay rent or other compensation to stay there.

Ms. S. moved in November 2013. It appears that Mr. R.H. or perhaps Mr. R.H. and Ms. M.W. paid the applicant Ms. S. the amount of \$200.00 for her to buy-out or break her existing tenancy at another place.

In or about late January or early February 2014, the applicant Ms. S. had planned a trip to see her daughter Ms. M.W. in Costa Rica. She requested of Mr. R.H. to permit her to have a friend stay in the home while she was away. Mr. R.H. refused.

It appears that both parties knew that Mr. R.H. would be occupying the home while the applicant Ms. S. was on her vacation.

Instead of merely occupying the home, while Ms. S. was away Mr. R.H. moved in. He removed all of the applicant Mr. S.'s belongings and put them in the garage. He thereafter denied her possession on her return from Costa Rica. His actions appear to have been contrary to the wishes of Ms. M.W..

As of this hearing date, the applicant Ms. S. has been staying with friends. She seeks an order of possession for the home and/or damages.

Analysis

Technically speaking it is for an applicant to prove that her relationship is that of landlord and tenant so that the provisions of the *Residential Tenancy Act* (the "Act") apply. If the parties are not landlord and tenant then I have no jurisdiction to decide the dispute and the applicant must seek the assistance of the courts.

The Act, s. 1, provides that "'rental unit" means living accommodation rented or intended to be rented to a tenant" and that a tenancy agreement is basically an agreement, written or oral, between and landlord and a tenant regarding possession of a "rental unit."

It's clear that the home in question is "living accommodation." The essential issue is whether or not it was "rented or intended to be rented to a tenant." The person who "rents or intends to rent" is the landlord; the person giving over possession of the premises, and so I conclude that the question can be further refined to ask whether or not the person giving possession, in this case Mr. R.H. or perhaps Mr. R.H. and Ms. M.W. together, rented or intended to rent the home to the applicant Ms. S. It is his (or their) intention that is the deciding factor, not the intention of the applicant Ms. S..

The intention of a landlord or person granting possession or occupation of living accommodation to another is best determined by the written tenancy agreement mandated by the *Act*. There is no such agreement here. Still, tenancy agreements may be oral. For such an agreement, it must be clear who the parties are, what the rental unit is and what the rent is.

Here, the parties and the property are reasonably clear. In regard to rent, the applicant Ms. S. would argue that rent was offset by the caretaking and security services she was providing by simply living there and the savings on the difference in the cost of insuring an occupied premises from the cost for a vacant premises.

However, I think that is where the applicant Ms. S.'s argument falls down. Firstly, no actual rental value was ascribed to the home nor were any particular services agreed to between the parties that would make up for a normal market rent for this home. Secondly, in my view an actual arms-length tenant paying a market rent for the home would have provided the full equivalent of the caretaking and security services Ms. S. was to provide and would have alleviated the same increase in insurance costs. The fact that no rental value was discussed, no list of services were agreed to and the fact that the applicant Ms. S. was paying no rent (or utilities) causes me to conclude that it is more likely that the parties were making a family decision to secure the property pending resolution of estate matters and ultimate sale of the home and, at the same time, conveniencing the applicant Ms. S. a family member, by giving her free accommodation.

Having regard to all the circumstances I don't think either party to this proceeding considered they were entering into a landlord and tenant relationship back in November 2013.

Conclusion

This dispute does not involve a residential tenancy and so the application must be dismissed.

This decision is not a determination that the applicant has not been wronged by the actions of Mr. R.H. while she was on vacation; only that this forum is not the proper one in the circumstances

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: March 21, 2014

Residential Tenancy Branch

