



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OPT, AAT, LAT, DRI, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant: to obtain an Order of Possession for the rental suite; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to dispute an additional rent increase; to allow access to the unit for the Tenant; to authorise the Tenant to change the locks to the rental suite; and to recover the filing fee.

Preliminary Issues

The Tenant and one of the Landlords appeared for the hearing and provided affirmed testimony. The Landlord provided no written evidence prior to the hearing but confirmed receipt of the Tenant’s Application and written evidence which had been provided prior to the hearing; however, the Landlord submitted that they had received the Tenant’s second set of written evidence late and did not have enough time to respond to it. I also note that the Residential Tenancy Branch also received this second set of written evidence late as set out by the Rules of Procedure.

During the hearing, I determined that the second set of evidence submitted by the Tenant related to an increase in her monetary claim to the original Application amount. However, the Tenant failed to amend her Application with the increased amount pursuant to Rule 2.11 of the Rules of Procedure. Therefore, I was unable to consider her increased monetary claim and, as the second set of written evidence was also submitted late, I did not consider this evidence for this hearing; however, I provide the Tenant leave to re-apply for the increased amount.

The Tenant also testified that she was no longer seeking an Order of Possession as she had no intention of returning to the rental suite; the Landlord explained that the suite in dispute is currently being occupied. As a result, I dismissed the Tenant’s Application and moved forward in considering the Tenant’s monetary claim.

Issue(s) to be Decided

- Does the Residential Tenancy Act apply to this tenancy?
- Is the Tenant entitled to monetary compensation as a result of being illegally evicted?

Background and Evidence

The Tenant testified that she had been living at another address and decided to move out of this address to the motel on September 1, 2014. She agreed with the staff member serving her that she would rent one of the rooms on a month to month basis for a monthly rent amount of \$600.00 which was payable to the Landlords on the first day of each month.

The Tenant testified that she paid a \$300.00 security deposit to the staff member for which she was issued a receipt; this was provided in written evidence and shows that the money was accepted as a security deposit. The Tenant testified that the staff member stated that she could rent it on a month to month basis for the winter period and if she proved to be a good Tenant, the tenancy would continue at the same rate in the summer period.

The Tenant provided in written evidence rent receipts showing \$600.00 cash and debit card payments were made by the Tenant on the first day of each month from the start of the tenancy through to May, 2014. The Tenant testified that when she went to pay her June, 2014 rent, the staff members refused to accept payment; the Tenant provided a witness statement to support the refusal of rent.

The Tenant explained that she received a letter from the Landlords on April 30, 2014 which stated that at the start of June 1, 2014, the rooms will be rented out on a daily basis starting at \$100.00 plus 15% tax and that the tenancy operates under the 'Inn Keeper's Act' and not the Residential Tenancy Act. The letter goes on to say that the off season rates were on a monthly basis and those renters are welcome to apply again in the off season.

The Tenant testified that on June 8, 2014 she received a letter from the Landlord stating that the Tenant was required to pay \$920.00, comprising \$800.00 for the new rent amount and \$120.00 for taxes for June, 2014 rent, otherwise she was not allowed to stay there.

The Tenant testified that she made a number of attempts to meet with the Landlord regarding the Landlord's refusal to accept rent but these were unsuccessful. The Tenant provided in evidence, letters she had written to the Landlord explaining the rent increase provisions of the Act which the Landlords were required to follow. The Tenant also provided a letter that had been issued to the Landlords by an advocacy group helping the Tenant, suggesting that the Landlords were not complying with the Act and cannot enforce a unilateral rental increase.

The Tenant testified that on June 11, 2014, she returned to the rental suite from lunch, to discover that her locks had been changed and learnt that her personal possessions had been stored by the Landlord.

The Tenant explained that in the interim time period she has been able to recover the majority of her belongings; however, she claims for damages to some of the items which were detailed in her second set of written evidence.

The Landlord submitted several times throughout the hearing that the Residential Tenancy Branch had no authority to hear this matter as their business was covered under the Hotel Keepers Act. The Landlord submitted that the Tenant signed a guest registration form which explained that the rents were changeable but provided no written evidence of this.

The Landlord submitted that they had informed the Tenant in April, 2014 that the rent amount was changing and this was sufficient notice to the Tenant that her tenancy was not covered by the Residential Tenancy Act. The Landlord went on to explain that the Tenant had caused significant damage to the rental suite but provided no documentary evidence to support this allegation.

Analysis

In determining jurisdiction in this matter, I have considered the following provisions:

The Act defines a tenancy agreement between a Landlord and Tenant respecting possession of a rental suite which is written, oral, express or implied.

Section 5 of the Act explains that a Landlord and Tenant cannot avoid or contract outside of the Act and regulations and if they do, this will have no effect.

Section 17 of the Act explains that a Landlord may require a Tenant to pay a security deposit as a condition of entering into a tenancy agreement.

Policy Guideline 9 to the Act lists a number of factors that an arbitrator may consider when determining whether a tenancy has been created between parties. It further explains that under a tenancy agreement, the Tenant is given exclusive possession which can include a month to month period and that if possession is given for a term rent is to be paid, there is a presumption that a tenancy has been created.

Based on the foregoing provisions, I find that, while the Landlord conducts their business under the Hotel Keeper's Act, this does not necessarily prevent parties from entering into agreements that would come under the jurisdiction of the Act.

The Tenant provided sufficient written evidence in the form of payment receipts that the Landlord accepted a security deposit as a condition of entering into a month to month tenancy. This is further corroborated by evidence showing that the Tenant paid rent on the first of every month for a period of nine months until the Landlord refused to accept rent. The Tenant also had exclusive access to the rental suite and was renting the suite as her permanent residence indicating that she was not living there for vacation accommodation.

As a result, I find that there is sufficient evidence that this tenancy was established under the Residential Tenancy Act and that the Landlord provided insufficient evidence to show that this tenancy did not fall under the Act.

During the hearing, I explained the above reasoning to the Landlord. The Landlord explained that they would seek legal remedies about the issue of jurisdiction and would be appealing this decision.

Although the Tenant and Landlord engaged in a short discussion around the potential settlement of the Tenant's monetary claim, the Tenant and Landlord agreed that it was better for the Tenant's monetary claim to be dealt with through another hearing. This was based on the fact that the Tenant wanted to re-submit her total monetary claim in one Application rather than split them and the Landlord wanted to consider their options in challenging jurisdiction in this matter and a potential monetary claim against the Tenant. As a result, I dismiss the Tenant's monetary claim with leave to re-apply.

Conclusion

For the reasons set out above, I determine that the Residential Tenancy Branch has jurisdiction in this tenancy and as a result, the Tenant and Landlord are at liberty to make monetary claims under the Residential Tenancy Act. The remainder of the Tenant's Application is dismissed.

As the Tenant was successful in establishing jurisdiction in this matter, I find that she is entitled to the return of the filing fee for the cost of making this Application pursuant to Section 72(1) of the Act. Therefore, I grant the Tenant a Monetary Order in the amount of \$50.00 which can be enforced through the Small Claims Court as an order of that court.

I also encouraged the parties to come together for informal resolution discussions between themselves before they decide to engage in formal dispute resolution proceedings.

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: August 21, 2014

Residential Tenancy Branch

