



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, ERP, MNDC, OLC, O, OPT, PSF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution for the following Orders:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement;
- an Order that the Landlord:
 - comply with the Act and regulation;
 - make emergency repairs for health or safety reasons;
 - provide services or facilities required by Law.
- an Order for Possession of the rental unit or site in favour of the Tenants; and
- an Order allowing the Tenants access to the unit for the tenant or the tenant's guests.

N.D. and M.M. appeared at the hearing, as well as D.B. who appeared as a witness. The Respondent, P.A., did not appear.

As the Respondent did not appear at the hearing, service of the Notice of Dispute Resolution Hearing and Tenant's Application for Dispute Resolution and supporting documentation ("Application Materials") was considered. M.M. testified that the P.A. was personally served with the Application Materials on October 23, 2014 at 9:10 p.m. at the rental property.

P.A. also submitted in evidence a 34 page affidavit dated and filed at the Residential Tenancy Branch on October 27, 2014, which was made in response to the Application Materials ("P.A.'s Affidavit").

I accept the undisputed evidence of M.M. and, as P.A. filed an affidavit in response, find that the Respondent was served with the Application Materials.

Preliminary Matter

A witness for the Applicants, D.B., testified that she moved into the rental unit in 2012. She further testified that originally she rented the entire home, but that, for financial reasons, she had others move in as roommates. She testified that at all times she discussed her proposed roommates with P.A. and that he was in agreement with her having roommates.

With respect to the Applicants, M.M. and N.D., D.B. testified that she introduced them to P.A. prior to them moving into the rental home. D.B. stated that P.A. agreed that M.M. and N.D. could rent rooms within the rental building and P.A. also agreed that M.M. would perform construction and renovation services. M.M. testified that he, N.D. and D.B. regularly met with P.A. to discuss the renovations and work he wished to M.M. to perform.

M.M. confirmed P.A. paid him \$1,600.00 for his renovation services. P.A.'s affidavit also confirms this transaction.

D.B. testified that she signed the Ministry of Social Development "Shelter Information form for both M.M. and N.D. On this form, D.B. identified herself as Landlord, although she did indicate P.A. was the property owner. She also testified that she collected rent from M.M. and N.D. for N.D.'s portion of the rent, and that M.M.'s portion of the rent was to be paid by his renovation services.

D.B. testified that she collected rent from other occupants in the building as well and did not remit the funds to P.A. She stated that this was agreeable to P.A. and that it was as a result of a prior Residential Tenancy Branch Dispute Resolution, wherein P.A. was found to owe her the sum of \$5,000.00. To satisfy this debt, the Landlord allowed D.B. to retain the rent she collected from others. D.B. further testified that she paid the utilities from the funds she collected from others.

No evidence of this prior arbitration was provided in evidence, nor was there any evidence of any such agreement between D.B. and P.A. concerning the rent paid by other occupants of the rental building. There was also no evidence of an agency relationship between D.B. and P.A.

M.M. testified that on September 22, 2014 he and N.D. returned to the rental property and could not access the house. The police were in attendance and informed them that someone had jumped out the second story window. Apparently the police searched the rental property and found four marijuana plants in the basement. M.M. stated that the police officers in attendance informed M.M. and N.D. that they could no longer live in the home. They were given 10 minutes to retrieve as many items as possible. Unfortunately their cats were not located at the time. M.M. testified that all of their furniture remains in the rental unit.

M.M. testified that he spoke to P.A. about the September 22, 2014 incident and their inability to access the rental property. According to M.M. P.A. stated that he was fined \$1,500.00 as a result of the police attendance at the rental unit.

The Applicants submitted in evidence a "Do Not Occupy" notice issued by the Town of View Royal. The date on the document had been blacked out such that it was not possible to determine when it had been issued; although, M.M. testified that Notice was issued sometime in October 2014. M.M. stated that it was his expectation that P.A. would return to the rental property and make the required changes to have the Do Not Occupy Notice rescinded by the Town of View Royal.

M.M. testified that in addition to M.M., N.D., and D.B., another individual, D.F. lived in the rental house. According to M.M. he and N.D. shared the four bedrooms upstairs with D.B. and D.F. lived in the basement suite. M.M. testified that they were all locked out of the rental unit on September 22, 2014.

According to M.M. and D.B.'s testimony, M.M., N.D. and D.B. are now residing in recreational vehicles on the property. D.F. has moved elsewhere.

M.M. and N.D. seek an Order that P.A. make emergency repairs for health or safety reasons, provide services or facilities required by law, and make the required changes to ensure the "Do Not Occupy" Notice is rescinded by the Town of View Royal.

M.M. and N.D. also seek an Order for possession of the rental unit or site and an Order allowing them and their guests access to the rental unit.

M.M. and N.D. also request a Monetary Order for rent paid, expenses relating to running a generator, as well as losses occasioned from being locked out of the rental unit.

Analysis and Conclusion

I find there is insufficient evidence to conclude that a tenancy exists between the Applicants and the Respondent property owner. No evidence of a tenancy agreement was provided, nor did the Applicants claim such a document exists. It appears more likely that M.M. and N.D. are occupants of the rental building rather than tenants.

There is also no evidence M.M. and N.D. paid rent to P.A. and in fact all witnesses agreed that rent was paid to D.B. D.B. signed the Ministry of Social Development “Shelter Information” form for both M.M. and N.D., identified herself as the “Landlord”, collected rent from them, and as such, if any tenancy exists, it is between M.M. and N.D. and D.B. as subtenants.

While there may be a separate employment contract between M.M. and P.A., such matters are not within my jurisdiction.

Notably, D.B. has not made an application for dispute resolution as a tenant, even though a tenancy clearly exists between her and P.A.

As I am unable to find a tenancy between M.M., N.D. and P.A., I do not have jurisdiction to grant the Orders sought by the Applicants; accordingly, the Application is dismissed.

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: November 07, 2014

Residential Tenancy Branch

