



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR OLC LRE PSF

Introduction

The landlord agreed she was served the application by registered mail. Both parties were present at the hearing.

This hearing dealt with an application by the applicant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord obey the provisions of the Act and restrict the landlord's entry to notice periods pursuant to section 29 and allow the tenant access to his suite pursuant to section 30;
- b) Compensation or a rent rebate for illegal entry, intermittent termination of facilities and loss of his peaceful enjoyment pursuant to sections 27, 28, 29 and 67.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is a tenant and that the landlord has breached the Act or his tenancy agreement by removing the use of facilities and disturbing his peaceful enjoyment by illegally entering his suite and making false allegations to the police? If so, is he entitled to a rent rebate and in what amount?

Background and Evidence

Both parties and a witness attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The parties became very upset and argumentative with each other at the commencement of the conference call. I muted them and instructed them that this was a hearing and they were to address their submissions to me; I advised them that if they continued disrespectful behaviour, they would be excluded from the conference.

The landlord stated that the applicant was never a tenant. She said he is a relative and she allowed him to move into her basement until he could get social assistance for she did not want to see him homeless. However, he assaulted her and the Police removed

him on September 26, 2015 so he is no longer on her premises. She said she never got any security deposit and he never paid any rent, she did not fill out any shelter information for the ministry and did not in any way consider him a tenant. In support of her statements, she submitted a Recognizance of Bail for the applicant set on September 17, 2015 when the applicant was charged with assault and threats. The Conditions are that he is to have no contact with the landlord and not to attend within 100 meters of her residence except to obtain his personal belongings in company with the Police.

The applicant contended he was a tenant, he paid a security deposit and rent in cash but had no receipts. He said he had a male witness to this but this witness could not attend the conference as he had no telephone. The female witness for the tenant said that although she has the same last name as the landlord, she is somehow related through marriage but does not know the landlord. She was extremely emotional and was yelling that the landlord was a liar; she was invoking religion and saying the applicant had paid rent. She had provided no documentary proof of this and was out of control in the conference so she had to be muted so the conference could continue.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The testimony of the applicant and the landlord is conflicting with regard to whether or not a tenancy existed. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I find insufficient evidence that the applicant was a tenant. He provided insufficient evidence that a tenancy existed such as a tenancy agreement or that he paid rent or a security deposit or that the landlord signed shelter information so he could obtain social assistance. Pursuant to definitions in section 1 of the Act, I find there was no agreement express or implied for a tenancy or occupancy. I find the landlord's evidence more credible and prefer it to the applicant's evidence. She provided credible statements of allowing him to briefly stay in the unit as he was a relative and homeless but she had to cancel this when he assaulted her. I find her statements more credible as she provided court information and bail conditions to support her evidence whereas the applicant provided no documentary evidence and the only witness he had in the hearing provided no relevant evidence but disrupted the hearing with yelling what appeared to be hearsay and derogatory statements. As section 2 of the Act states it applies to tenancy

agreements, I find I have no jurisdiction in this matter to order the landlord to allow him entry to her basement suite or to provide him facilities as I find the applicant was not a tenant. I also find I have no jurisdiction to over ride conditions of bail imposed by the Court which forbid him to have contact with the landlord or to be within 100 metres of her residence.

Conclusion:

I dismiss the application of the applicant without leave to reapply. No filing fee was involved.

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 12, 2015

Residential Tenancy Branch

