



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR

Introduction

This matter involved an application for dispute resolution made by the Applicant claiming for unpaid rents on a boat.

The Applicant appointed an Agent who appeared to represent the Applicant at the hearing, as the Applicant was out of the province. The Respondent appeared by herself. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Respondent testified that she had submitted evidence to the Branch about three days before the hearing. This evidence was not before me. Furthermore, the Respondent did not serve the Applicant with this evidence and the Applicant did not have this evidence. The Respondent was allowed to testify about this evidence; however, I note this evidence was not before me or supplied to the Applicant.

Issue(s) to be Decided

Does the *Residential Tenancy Act* (the "Act") apply to this scenario?

If the Act does apply, is rent owed?

Background and Evidence

In evidence the Applicant had submitted a letter appointing the Agent to appear at the hearing on her behalf. The Applicant had also submitted a copy of a 10 day Notice to End Tenancy

dated April 11, 2015. There was no other documentary evidence before me on the dispute. There were other documents submitted by the Applicant but these are not related to the dispute, rather the application fee payment process.

The Applicant's Agent testified that the Applicant owns a boat tied up at a marina on an ocean bay. The Agent testified that the Respondent began to rent the boat in October of 2014. The Applicant is claiming for rent for February, March and half a month for April, in the amount of \$2,750.00. The Agent testified that the monthly rent was \$1,100.00, payable on the first day of the month. She testified that a security deposit was requested but was not paid by the Respondent. The Agent was not sure if there was a written agreement regarding the rental.

The Respondent's main argument was that the Act did not apply to renting a boat. The Respondent testified that she had been informed by a representative of the Residential Tenancy Branch that the Act did not apply to boats.

The Respondent further testified that when she first looked at the boat she discussed with the Applicant the condition of the vessel. The Respondent wanted to make certain it had no leaks.

The Respondent testified her and the Applicant had a one year agreement, based on the assurance of the Applicant that there were no previous issues with the vessel. The Respondent alleged there was a written agreement, but no security deposit had been requested from her.

I note there was no written agreement between the parties in evidence before me.

The Respondent alleged many things during the course of the hearing. In brief she alleged the following:

1. The boat had been rented to her on "fraudulent premises", as the boat had allegedly been used in some sort of criminal activity;
2. The boat leaked, was unsafe and was listing to the side;
3. The Respondent had to leave the boat due to her life threatening medical conditions;
4. The Respondent alleged the Applicant had sent people to the boat to threaten her;
5. The Respondent had or was obtaining a restraining order against the Applicant;
6. The Respondent had looked after cats for the Applicant; and
7. The Respondent had tried to re-negotiate the agreement with the Applicant due to her severe, catastrophic, life threatening health situation.

The Respondent agreed she had failed to pay the Applicant the rent that was claimed.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

During the course of the hearing I explained to the parties that I was accepting jurisdiction sufficient to hear the entire case in the event I found jurisdiction over this matter, but I would have to make a determination on jurisdiction prior to dealing with the rent issue.

Having reviewed the evidence and testimony, the relevant portions of the Act, and on a balance of probabilities, I find that the Act has no jurisdiction in this particular case and I dismiss the Application without leave for the following reasons.

Under the definitions in section 1 of the Act, the following applies:

“rental unit” means living accommodation rented or intended to be rented to a tenant”

“residential property” means (a) a building, a part of a building... (b) the parcel or parcels on which the building... are located,...

[Reproduced as written.]

In this instance the rental unit is a boat located on water, not on land. Furthermore, in the ordinary sense of the word and the usage of a vessel, a boat is usually not considered to be a rental unit or residential property for rent.

The definition of a boat in the Canadian Oxford Dictionary is:

“boat” 1. A small vessel propelled on water by an engine, oars or sails. 2. (in general use) a ship of any size... [K. Barber, H. Fitzgerald, T. Howell, & R. Pontisso eds., *The Oxford Canadian Dictionary*, 2d ed., (Don Mills, Ont., 2006)]

As described in Policy Guideline 27 - Jurisdiction, the Act does not confer upon the branch the authority to hear all disputes regarding every type of relationship between two parties. The authority to make decisions in rental matters flows from the Act. Only matters covered under the Act may be disposed of through the branch’s dispute resolution process.

As for the Applicant serving a 10 day Notice to End Tenancy in the Branch’s approved form, I do not find the use of this form itself conclusively indicates a residential tenancy has occurred. It might be the Applicant used this in error not understanding that the Act did not apply to the business relationship here. Nevertheless, I find the use of the approved form has minimal persuasiveness as to jurisdiction in this instance.

In addition, there are bodies of water in British Columbia which the federal government has paramount authority over the provincial government. In this particular instance I note the body of water where the boat is moored is a scheduled harbour under the *Fishing and Recreational Harbours Act* (R.S.C., 1985, c. F-24). While this legislation likely pertains more to the

relationship between the owners of the marina and the owner of the boat, this is one additional indicator of jurisdiction that must be examined.

Therefore, based on all of the above, I find I have no jurisdiction under the Act in this particular instance, and the Application is dismissed without leave.

The Applicant and Respondent may seek legal advice on the correct court to bring this dispute to.

Conclusion

I find the Act does not apply to this situation involving a boat and I decline jurisdiction.

The Application is dismissed without leave.

The parties may seek legal advice on which court to bring this dispute to.

This decision is final and binding on the parties and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 02, 2015

Residential Tenancy Branch

