



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, OPT, FF

Introduction

This was a hearing with respect to the tenant's application for a monetary award, for an order that the respondent comply with the *Residential Tenancy Act* and for an order for possession. The hearing was conducted by conference call. The applicant called in and participated in the hearing. The respondent did not attend, but he was represented by his daughter who acted as his agent.

Issue(s) to be Decided

Is the applicant entitled to a monetary award and if so, in what amount?

Is the applicant entitled to any other relief, including an order for possession?

Background and Evidence

The applicant has claimed damages based on her assertion that the respondent agreed to allow her to rent a house on his property in Kelowna. The tenant has claimed a monetary order for compensation as well as an order for possession and an order that the landlord comply with the *Residential Tenancy Act*, Regulation or tenancy agreement.

According to the tenant she learned of a vacancy from her mother-in-law, who was acquainted with a tenant who died in August, 2015. She said that she visited the owner of the property in September. The owner of the property, Mr. E. B. is the respondent, in this proceeding. The tenant said the owner told her the property would be available for rent for the tenant and her two dogs. She said she visited the respondent weekly and: "developed a great new friendship". She said that on or around September 8, 2015 the respondent: "received \$50 from me to secure the rental property when it was ready. We discussed appliances and utilities at that time."

On October 7, 2015 the tenant moved a container full of her belongings to the rental property by truck. She said she moved them with the respondent's permission because she had to vacate her current residence by October 15th. The tenant said that she then heard from the landlord's daughter who said that she will not be permitted to move in and she must remove all her belongings or they would be removed. The tenant said she was devastated because she was assured that she would be able to move to the respondent's house.

The tenant made the following monetary claim:

• Temporary housing while I continue to look for a new rental	
- From Oct 20 – Nov 30:	\$1,350.00
• Telus suspension, per month:	\$25.00
• Cost associated to my container	
Extra month rental:	\$168.00
Removal (loaded) from (rental property)	\$123.20
Deliver to new rental (if found)	\$123.20
Storage at yard Nov	\$168.00
Storage at yard Dec	\$168.00
Increased cell phone use	\$80.00
• Increased gas usage	\$100.00

	\$2305.40

These are for the month of November
Cannot find rental for Dec 01 as of yet

The applicant later amended her application to claim additional amounts, said to include a pet deposit amount, a rent differential and an amount for pain and suffering. The amended claim sought payment of the sum of \$4,096.40.

The respondent is 85 years old. He was represented at the hearing by his daughter. She lives in a property adjacent to the property owned by her father. A lawyer acting for the respondent and his daughter wrote a letter to the applicant dated October 20, 2015. In the letter the lawyer said in part as follows:

Our clients advise that you recently approached (name of respondent) and expressed an interest in renting a house at the above noted address. Unfortunately, after performing a background check (name of respondent) is unable to rent this property to you'

We understand you have been aggressive in your communications and dealings with (respondent). As (respondent) is an elderly man of ailing health it has become clear an amicable landlord/tenant relationship would not be possible. Accordingly any and all communications in this matter are to be directed to the writer.

The respondent submitted a written statement in response to the application and his daughter provided a statutory declaration in response to the claim. The respondent denied that any binding agreement was made to rent to the tenant. The intended rental unit is an old house moved onto the property in 1970. According to the respondent's statement, the former tenant's family was still engaged in removing her belongings and cleaning the rental unit when he was approached by the applicant. He said the house was old and needed repairs, including a new roof, painting, plumbing repairs and flooring work. He said that he did not agree to rent to the tenant. He did not ask the applicant for a deposit; she insisted on giving him \$50.00 and that money has since been returned to her by his daughter. The respondent did not give the tenant permission to move a container to the property and when the respondent objected to the delivery and to the tenant's request to run an electrical cable to the container, the tenant said she would telephone the sheriff to deal with it if she had to.

The respondent's daughter testified that she made enquiries of the applicant's former landlord and, based on those enquiries, the respondent concluded that the applicant would not be a suitable tenant.

Analysis

The applicant claimed that she made a tenancy agreement with the respondent and she is entitled to damages for the landlord's breach of that agreement. The tenant has the onus of proving that there was a concluded tenancy agreement with the landlord containing all of the essential terms necessary to create a tenancy.

The *Residential Tenancy Act* provides by section 13 that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. When there is evidence, by conduct, among other factors, of a concluded tenancy agreement, the Residential Tenancy Branch will acknowledge and enforce oral tenancy agreements.

The tenant in this case has not proved, on a balance of probabilities, that a binding tenancy agreement was ever concluded. The owner denies making such an agreement and I find that the applicant has shown only that there were discussions concerning a

possible agreement, but she has not proved that an agreement was concluded. In the absence of proof that the respondent agreed to rent the unit to the tenant on specific terms, the respondent is not responsible for any of the applicant's expenses or claims for actions that she took without the respondent's consent or approval and without a binding and concluded tenancy agreement. The application is therefore dismissed without leave to reapply.

Conclusion

The application is dismissed without leave to reapply. No filing fee is awarded for this application.

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: January 8, 2016

Residential Tenancy Branch

