



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to determine whether or not the Residential Tenancy Act (the “Act”) applies.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Does the Act apply?

Background and Evidence

The tenant testified that they met the owner of the property in 1986 and was hired to help clean the brush on the property for \$6.00 per hour. The tenant stated in 1987, the owner indicated that they could move onto the property, live in their van if they cared for the animals, and perform other services on the property. The tenant stated shortly after that the landlords provided them with a trailer on the south corner of the property, which consisted of a yard that was 105 by 105 feet. The tenant stated that over time they built a fence and dug a trench for power and water and this area was used for their sole occupancy.

The tenant testified that in exchange for the living accommodation they cared for the property as a caretaker. Protecting the property from trespassers, and keeping in contact with the owners. The tenant stated that the owners of the property have not been to the property in 8 years and they have been caring for the property in exchange for living accommodations.

The advocated stated that living accommodation was exchanged for the tenant to act as caretaker of the property. The advocated stated while the relationship has changed over the years, the tenant has provided services, and significantly in the last 8 years the owners have not attended the property, which the tenant has cared for. The advocate stated that the tenant simply wants to be acknowledged that they were a tenant providing services and should be entitled to be protected by the Act.

The landlord's agent testified that a tenancy never existed. The agent stated that the tenant was only allowed to live on the property out of kindness, as the owners were concerned for the tenant as the tenant was sick and living in their van, when they first met.

The landlord's agent stated that although they admit the tenant did some work on the property; however it was not to the extent the tenant has indicated. The agent stated that there has only been one horse on the property for some time, which the tenant only requires to feed during the winter months, which they estimate that in one year that would be approximately 48 hours of labour.

Counsel submits that this is a non-exclusive licence to occupy and does not fail within the Act.

Analysis

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

Section 2 of the Act states,

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to **tenancy agreements**, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

[Reproduced as written]

[**My Emphasis added**]

The Act defines,

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, **and includes a licence to occupy a rental unit;**

[Reproduced as written]

[**My Emphasis added**]

The Act defines,

"rent" means money paid or agreed to be paid, or value or **a right given or agreed to be given**, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.

[Reproduced as written]

[**My Emphasis added**]

While there was no written agreement to determine the value of service or the rent, the tenant has resided on the property since 1986, in a trailer provided by the landlords. I have considered the nature of the relationship of the parties and I am satisfied that the tenant was given the right by the landlords to occupy the premises in exchange for services, such as feed the horse or to ensure the property was protected from trespassers as it would be unreasonable to consider otherwise, when the owners have not attended the property for eight years.

I find the Act applies to this situation. Therefore, I find the landlords must provide notice to end tenancy by a method permitted by the Act, such as end of employment with landlord pursuant to section 48(2) of the Act, or notice to end tenancy for landlord's use of property, pursuant to section 49 of the Act.

Further, if the landlords have taken away services such as the electricity, I order that the landlords immediately restore those services until such time as the tenancy has legally ended under the Act.

Conclusion

The landlords must comply with the Act, by providing notice to end the tenancy in the proper form. The landlords are ordered to restore services.

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 03, 2016

Residential Tenancy Branch