



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC LRE O

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on September 15, 2016. The Tenant filed seeking an order to have the Landlords comply with the *Act*, regulation, and/or tenancy agreement; to suspend or set conditions on the Landlords' right to enter the rental unit; and for other reasons.

The hearing was conducted via teleconference and was attended by both Respondents and the Applicant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The female Respondent indicated that she wished to have the male Respondent speak on her behalf. Therefore, for the remainder of this decision, terms or references to the Respondents importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Respondents confirmed receipt of the application for Dispute Resolution; notice of hearing documents; and evidence submitted by the Applicant. No issues regarding service or receipt were raised. As such I considered the Applicant's submissions as evidence for this proceeding. No documentary evidence was submitted by the Respondents.

Upon review of the application the Applicant stated she wished to withdraw her request to set conditions on the landlords' right to access to the rental unit. She submitted that request was initially to protect her during her trip outside of the Country and now that she has returned she no longer needs that order.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Does this tenancy fall within the jurisdiction of the *Residential Tenancy Act* (the *Act*)?
2. If so, do both Respondents meet the definition as a Landlord in accordance with the *Act*?
3. If so, should the Landlords be ordered to comply with the *Act*, Regulation, and/or the terms of the tenancy agreement?

Background and Evidence

The Applicant began occupying the rental unit as of February 1, 2016 based on a verbal agreement. That agreement required the Applicant to pay a monthly fee of \$350.00 to the owner on or before the first of each month plus the cost of utilities and repairs. No deposits were required to be paid.

The rental unit was described as an older single detached 2 bedroom 1 bathroom home which required some repairs and updates. The rental unit is owned by the male Respondent's mother for whom the male Respondent has Power of Attorney (POA). The owner was moved into a care facility on July 11, 2016.

The Applicant testified that she had entered into a one year verbal tenancy agreement which would allow her to live in the rental unit until February 2017. She stated that as part of that agreement she was required to conduct repairs; do some gardening and painting; and pay for utilities. She asserted her occupancy would be reassessed and if the family did not need to sell the home her occupancy would continue and her rent would increase to \$450.00 per month in February 2017.

The Applicant pointed to her evidence which included copies of text messages between herself and the female Respondent where they discussed the arrangements of her occupancy. She noted that the January 26, 2016 text message which stated in part: "*I could swing by and grab the keys, drop off some cheques and sign the 'lease'.*" was evidence that she entered into a tenancy agreement.

The Applicant stated that the Respondents had been engaged in a family dispute regarding the house. She has since received a letter issued by the male Respondent dated September 15, 2016, which stated she had to vacate the property by November 30, 2016. In addition, she provided a copy of a text message sent by the Respondent(s) which stated, in part, that the Respondent's sister "*and her lawyer want you out ASAP unless you agree to rent at fair market value \$1,500 monthly.*"

The Applicant now seeks an Order confirming her occupancy fell within the jurisdiction of the *Act*, and an Order that the Respondents must serve her proper notice if they wish to end her tenancy.

The Respondent argued his spouse had no authority to act in this matter as he was the only person who had POA. He asserted they were not the Applicant's landlords as they had entered into a caretaker arrangement with her and not a tenancy agreement. He confirmed there had been a family dispute and that that matter had been resolved and with the family deciding to sell the property. The property was listed for sale on October 1, 2016.

The Respondent asserted there were no fixed term commitments; rather, the agreement was to continue until such time as the family decided to sell the property. That time has come, the property has been listed for sale, therefore, they are of the opinion the Applicant needs to vacate the property.

The Respondent confirmed both he and his wife were present at the meeting with the Applicant in January 2016 when she picked up the keys. He asserted he told her there would be no lease agreement because this was not going to be a tenancy arrangement it was a "caretaker" arrangement.

The Respondent testified there was no written "caretaker agreement" and the Applicant was not considered their employee. Their verbal agreement included the following terms: the owner's and her family's personal belongings would remain in the basement and in the garage; the owner and her family would have access to the basement, garage, and property; the owner could visit the property, access the house and sit on the porch anytime she wanted to; the property would be maintained by the Applicant, as gardening; the Applicant would occupy the property for a fee of \$350.00 per month, pay all utilities, maintain the gardens, and conduct repairs; until the family decided to sell the property. The Respondent stated this provided a situation whereby the owner's home insurance would be satisfied the property was not left abandoned.

The male Respondent suggested that his wife and the Applicant may have made other agreements over drinks at a vacation property that related to the Applicant's occupancy which he may have not been privy too. After which he stated his wife had no authority as he was the person who held the POA.

The Respondent pointed to the Applicant's submissions which included a text message on page 7 where the Applicant acknowledged she had an understanding that the house might be sold. He was of the opinion that text was evidence that there were no guaranteed time frames agreed for her occupancy.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as 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.

Section 91 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

The undisputed evidence was the Applicant entered into a verbal agreement to occupy the subject property as of February 1, 2016 in exchange for the payment of \$350.00 per month plus payment of utilities and general maintenance of the property.

Notwithstanding the male Respondent's opinion that they had entered into a caretaker agreement and not a tenancy agreement; standing alone and in absence of any written contract to the contrary, the terms of the agreement provided the Applicant possession of the property, use of common areas, services and facilities, and included a licence to occupy in exchange for a monthly payment. There was insufficient evidence before to prove the parties entered into an agreement for a fixed period of time. As such I find this verbal agreement met the definition of a month to month tenancy agreement which is enforceable under the *Act*.

Section 1 of the *Act* defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

By his own submissions both the male Respondent and his mother were present with his wife when the Applicant attended the Respondents' home to drop off cheques and pick up the keys to the property. Given the circumstances presented to me during the hearing, I do not accept the male Respondent's assertion that his wife acted unilaterally and without authority when communicating with the Applicant regarding her occupation of the property. Rather, I conclude the male Respondent had full knowledge of the communications between his wife and the Applicant. In addition, I find both Respondents meet the definition as a landlord, pursuant to section 1 of the *Act*.

As I have found the tenancy to be recognized and enforceable under the *Act*, I would suggest that each party take the time to familiarize themselves with their obligations under the *Act*. The *Act* and numerous fact sheets can be accessed at the Residential

Tenancy Branch website <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenant was successful with her application and the parties were found to have entered into a tenancy agreement enforceable under the *Act*.

This decision is final, legally binding, and 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 10, 2016

Residential Tenancy Branch