



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant to cancel a notice to end tenancy for unpaid rent.

Both parties appeared for the hearing and provided affirmed testimony and confirmed that the only evidence provided prior to this hearing was a copy of the notice to end tenancy for unpaid rent. The Respondent confirmed personal receipt of the Application.

The hearing process was explained and no questions were raised as to how the proceedings would be conducted. Both parties were given a full opportunity to present evidence, make submissions to me, and to cross examine the other party on the evidence provided. At the end of the hearing, the parties were given an opportunity to ask any questions before the hearing was concluded, and none were raised.

Issue to be Decided

Does the *Residential Tenancy Act* (the “Act”) have jurisdiction in this dispute?

Background and Evidence

The Applicant testified that in February 2016 she rented a different rental unit to the dispute address with the owner of that rental unit. A tenancy agreement was signed for that rental unit for which monthly rent was payable by the Applicant in the amount of \$2,000.00 on the first day of each month under a month to month tenancy; the Applicant also paid a \$1,000.00 security deposit which the owner of the rental unit still retains in trust.

The Applicant testified that in March 2017, she was informed by the owner Landlord of that rental unit that she would have to leave because the owner wanted to move back into the rental unit. The Applicant testified that she moved out of that rental unit on March 17, 2017, not knowing her rights and the owner's obligation to give her a proper notice to end tenancy for the use of the rental unit.

The Applicant testified that she was informed by the owner of that rental unit that he would house the Applicant in a temporary address, which is the dispute address of the Application, until such time the owner was able to get her into more permanent rental accommodation.

The Applicant testified that she moved into the dispute address on March 17, 2017. The Applicant explained that no tenancy agreement for the dispute address was signed and she did not pay any security deposit for the dispute address.

The Applicant explained that she did not pay any rent for March 2017 because no agreement was made and the owner did not inform of what the rent amount was to be paid. The Applicant testified that she did give the owner \$800.00 on April 4, 2017 for occupancy of the dispute address but at that point no amount had been agreed as rent payable for the occupation of the home.

The Applicant testified that she was only supposed to be housed at the dispute address for two weeks as promised by the owner of the rental unit, after which the owner was going to move her to a permanent address. The Applicant confirmed that she has not paid any monies to the owner since April 2017 and stated that the dispute address has a number of repairs that need to be done.

The Applicant confirmed that on or after May 5, 2017 she was served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") which was placed into her mail slot by the Respondent. The 10 Day Notice was provided into evidence by the Tenant and shows a vacancy date of May 31, 2017 due to \$3,100.00 in unpaid rent due on May 1, 2017. The Tenant disputed the amount on the 10 Day Notice, submitting that the rent amount for the dispute address had not been agreed upon or determined.

The Respondent testified that she had been employed as the owner's agent at the beginning of May 2017 and had no knowledge of what had occurred prior to this time. Therefore, she could not confirm or deny the Applicant's testimony.

The Respondent confirmed that she had served the 10 Day Notice to the Applicant by putting it in her mail slot on May 5, 2017. The Respondent testified that according to her knowledge the rent for the dispute address had been set at \$1,300.00 per month. However, that was the limit of the Respondent's knowledge of this tenancy and she was unable to answer any further questions with regards to how this arrangement had been born.

The Applicant disputed the monthly rent amount testified to by the Respondent and stated that nothing had been agreed either verbally or in writing.

Analysis & Conclusion

Policy Guideline 9 titled Tenancy Agreements and Licences to Occupy explains when a tenancy under the Act has been entered into. It also lists a number of conditions an Arbitrator may consider surrounding the occupation of the premises and what the parties intended in the circumstances. The guideline states that some of the factors that may weigh against finding that a tenancy exists between the parties are as follows:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

Based on the limited evidence before me, I am only able to conclude that the parties have failed to establish or convince me that they have entered into a tenancy for the dispute address that would be covered under the Act.

I find that the Applicant and the owner of the rental unit the Applicant was living in before she moved to the dispute address, had a tenancy agreement that would have been covered by the Act. That tenancy agreement had a set amount of rent payable by the Applicant on a monthly basis, a tenancy agreement was signed, and a security deposit was paid.

Notwithstanding the Applicant's arguments that she was illegally evicted, I find that tenancy was ended on March 17, 2017 pursuant to Section 44(d) of the Act because the Applicant vacated the rental unit.

There are three basic tenets of any contract: capacity, consensus, and consideration. I find there is insufficient evidence before me that any question of capacity of either party exists; that the parties reached any consensus on the amount of rent; and no monies such as a security deposit provided consideration to establish a tenancy.

I find that in the absence of a signed tenancy agreement or an agreement on the amount of rent payable, I am not convinced that the Applicant was given occupation of the rental unit for the purposes of a tenancy. Rather, I find it was provided to the Applicant as temporary accommodation until such time the parties were able to establish a tenancy for another rental unit.

In the absence of any other evidence apart from the parties' oral evidence, I must decline jurisdiction in this matter.

Conclusion

The parties have failed to provide sufficient evidence to show that a tenancy under the Act has been established in this dispute. Therefore, I have no jurisdiction to resolve this dispute. The parties are at liberty to seek alternative legal remedies.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 12, 2017

Residential Tenancy Branch