



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, FF

Introduction

This hearing dealt with an application for an order of possession of a property. The matter was scheduled as a teleconference hearing. The applicants and respondents participated in the teleconference hearing.

The Applicants are seeking an order of possession of the property based on an agreement made outside the *Residential Tenancy Act*.

Preliminary Issue – Jurisdiction

The Applicants testified that they entered into an agreement with the respondents on April 5, 2017.

The Applicants testified that the respondent Mr. J.M. is their son. They testified that they own the property in dispute and they offered use of the property to their son to help him improve his life.

The Applicants testified that the respondents do not pay monthly rent and did not pay a security deposit.

The Applicants testified that the agreement for the living arrangement was based on consideration that the respondent Mr. J.M. is their son. They testified that the arrangement was one of generosity. The applicants testified that they could have rented the property out for \$1,400.00 per month.

The Applicants provided a copy of an agreement that permits the applicant's son and girlfriend to stay at the dispute address. The agreement states that it is not a tenancy agreement under the *Residential Tenancy Act*. The agreement states that the parents of Mr. J.M. allow him to stay at the property as long as he is clean of heroin; takes his medication and submits to a weekly urine testing. The agreement contains conditions and terms including that the cost of utilities are to be paid to the parents of Mr. J.M. on the 1st of every month.

The agreement specifies that the respondent Ms. K.P. has no claim of right to stay at the property under a tenancy agreement.

The agreement states that if any of the terms of the agreement are broken Mr. J.M. and Ms. K.P. will be asked to leave in a time frame specified without any dispute.

The Applicants provided a letter of eviction dated May 31, 2017. The letter indicates that the terms of the agreement were broken and the respondents were given until June 30th to leave the property. The Applicants testified that the respondents have not vacated the property.

In response, the respondents testified that they signed the agreement. Mr. J.M. testified that they do not pay rent to the applicants and they did not pay a security deposit. He acknowledged that they were given a break by not having to pay rent.

Mr. J.M. testified that it is not fair to Ms. K.P. that her living arrangements are impacted due to his failure to comply with the agreement.

Ms. K.P. testified that she initially did not want to sign the agreement but did sign it the day after Mr. J.M. signed it. She testified that the Landlord changed the locks on the house.

The Residential Tenancy Branch Policy Guideline #9 Tenancy Agreements and Licenses to Occupy clarifies the factors that distinguish a tenancy agreement from a license to occupy and is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. For example, a park owner who allows a family member to occupy the site and pay rent, has not necessarily entered into a tenancy agreement. In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.

Some of the factors that may weigh against finding a tenancy are:

- 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

Analysis

I find that the agreement is clearly written with the intention that the arrangement is not a tenancy under the Act. I find that some of terms of the agreement fall outside the authority of the Act. In a tenancy situation under the Act, a Landlord does not have the authority to require adherence to medication, medical appointments, and urine testing, as terms of a tenancy.

The agreement allows the applicants to revoke permission at any time if the terms are broken. The respondents agreed to these terms in exchange for living at the property rent free. In addition the respondents did not pay a deposit. The agreement only requires monthly payment of utilities. I find that the agreement is based on a family relationship, which included generosity to the occupants.

Based on the testimony and evidence before me, I find that the living arrangement is a license to occupy situation and not a tenancy under the *Residential Tenancy Act*.

Based on my finding that this living arrangement is not a tenancy, I find that I do not have jurisdiction to hear this application.

Conclusion

The agreement reached by the parties is not a tenancy. I decline jurisdiction to hear this matter.

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: September 28, 2017

Residential Tenancy Branch