



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT
Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution, filed September 8, 2017, wherein the Applicant requested an Order allowing him access to a rental unit.

The hearing was conducted by teleconference on October 25, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Applicant entitled to an Order for access to a rental unit pursuant to section 30 of the *Residential Tenancy Act*?

Background and Evidence

The Applicant testified that he moved into the cabin with his grandson on May 15, 2017. He described the cabin as a one bedroom 1,200-1,500 square foot home on a large property owned by the Respondent. He claimed that he has known the Respondent for 3-4 years.

The Applicant stated that the Respondent asked him to live in the house and to supervise the cleaning up of the land and to look after her interests in terms of a pending pipeline. He claimed he had a letter dated May 15, 2017 from the Respondent which permitted him occupation; however, this letter was not provided in evidence. The Applicant testified that this agreement did not have a term and the letter from the Respondent simply provided "until otherwise advised".

The Applicant claimed that he hired others to work on the property to help remove old buildings. He stated that he worked over 500 hours on the property and paid others for their time.

The Applicant further stated that he lived in the cabin from May 2017 to September 2017 when he was denied access to the property on or about September 23, 2017. He advised that he applied for Dispute Resolution on September 8, 2017 as on or about that date, the Respondent's friend, H. (whom the Applicant claimed lived with the Respondent), came to the residence with a chainsaw and was going to cut a hole in the roof. The Applicant stated that he called the police and they arrived they told him to let H. fix the roof, but also told H. to not use a chainsaw to cut into the roof. He confirmed that he did not call the Respondent at the time about this "chainsaw incident".

The Applicant stated that prior to the "chainsaw incident", the Applicant had put a note on the window which read "for access please call [Applicant's name]". He provided in evidence a photo of this note.

The Applicant further stated that after the "chainsaw incident" H. returned to the cabin at approximately 9:00 p.m. with a chop saw and when H. went up on the roof he called the police immediately. The Applicant stated that the police were not required to attend because H. was only there five minutes. The Applicant confirmed that again he did not call the Respondent about this incident; rather he called the neighbour, R.M., whom he described as the Respondent's secretary.

The Applicant also claimed that on or about September 4, 2017 a man by the name of J. came to the cabin and boarded up the front door.

He also stated that at one point in time, also after the chainsaw incident, the Respondent, H. and J. and another lady came to the cabin and spoke to the Applicant. He did not provide further details of this meeting/discussion.

The Applicant stated that he returned to the cabin on September 22 and the cabin was completely boarded up. He stated that his grandson's cat was inside, although there was food outside for the cat. He also stated that all of his items remain in the property, as well as in the cabin next door. He claimed that since being denied access to the cabin he has been living with friends. He stated that he has been at the property as recently as October 25, 2017 looking for the cat.

In response to the claim, the Respondent stated that she did not enter into a tenancy with the Applicant. She confirmed that she knew him for some time, as approximately five years ago he was trying to set up a business as he was interested in buying the property from her. She further stated that in the middle of May 2017 the Applicant was being evicted from his premises in a nearby property. She stated that she knew that he had guardianship of his grandson and

she was concerned that he did not have a place to stay. She stated that she allowed him to live in the cabin as her guest for a three month period during the summer as she wanted to help him out. She stated that she did not recall providing the Applicant with a letter providing him authority to live on the property.

The Respondent further testified that there was no arrangement that the Applicant was to do work on the property.

She stated that in August 2017 she reminded him he had to move out. She confirmed that she sent him an email advising him to vacate the cabin by August 25, 2017; although she did not provide a copy of this email in evidence. She also stated that she met personally with him on August 27, 2017 (the meeting he reference with her friend) at the property at which time she reminded him he had to move out. She stated that he confirmed he was moving out in September. She stated that she had a recording of this discussion; although, again this was not in evidence.

The Respondent stated that the cabin is no longer habitable as the windows and doors have been removed and there is no power. Further, she said that Rats and squirrels ate through the wires such that there was no power and this has now created a fire hazard. She also stated that the rot is so extensive the cabin is no longer habitable.

She submitted that the Applicant's testimony that he was at the property the day before the hearing is not true as he would have noticed that the cabin was not habitable.

The Respondent further stated that the Applicant has commenced a claim in Supreme Court against the pipeline, without her knowledge or consent, and that as a result she was forced to retain legal counsel.

The Respondent further stated that, in the first week of September, the Applicant demanded a meeting with her lawyer in relation to his claim against the pipe line. She stated that during this meeting she told the Applicant that she was willing to move his items to a storage locker.

The Respondent further stated that on September 23, 2017 the Applicant's items were moved from the cabin by bonded movers to a commercial storage facility in the community in which the cabin is located (the address of which is on the unpublished cover page of this my Decision.) She stated that prior to this she as informed by R.M. (her caretaker) that he had not been at the property for weeks; she therefore assumed that he had moved out as per her request that he move out by August 25, 2017. She further confirmed that the storage fees are paid until the end of November 2017 and there is a key at the front desk for him to retrieve his items.

The Respondent further stated that the workers on the property have not seen the Applicant's cat and in any case, it is her understanding that the caretaker, R.M., has agreed to contact the Applicant should she see the cat.

The Applicant also confirmed that she is not agreeable to the Applicant attending the property as the representatives of the pipeline are afraid he will damage the pipeline. She further stated that the pipeline representatives were going to obtain an injunction preventing him from going to the property, but when it appeared that he had moved out, they did not obtain this injunctive relief.

In reply the Applicant stated that he had items in another cabin on the property. The Respondent responded that she did not agree that he could store items elsewhere on the property.

Analysis

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated authority under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge; rather, Arbitrators must only assume jurisdiction over tenancy disputes which are governed by the *Residential Tenancy Act*.

After consideration of the testimony of the parties and the evidence before me, I find that there is insufficient evidence that a tenancy existed. I decline jurisdiction for the reasons which follow.

The Applicant alleges he entered into a tenancy agreement with the Respondent property owner permitting him exclusive occupation of a cabin on her property, as well as the ability to store items in another cabin, for an indeterminate period of time. He further alleged that he was to work on the land and protect the Landlord's interests against a pipeline in lieu of payment of rent.

The Respondent denies any such agreement existed. Rather, she submits that in May of 2017 the Applicant and his grandson were being evicted from a rental unit, and as she felt sorry for him, she allowed him to move into a vacant cabin on her property for the summer months. She testified that she was clear with him that he would be expected to move at the end of the summer, and that on August 25, 2017 she reminded him of this expectation. She also testified that during a meeting with the Applicant and her friend on August 27, 2017 he confirmed that he would be moving out in September.

Residential Tenancy Policy Guideline 9—Tenancy Agreements and Licenses to Occupy clarifies the factors that distinguish a tenancy agreement from a license to occupy and provides in part as follows:

...

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. The

landlord may only enter the site with the consent of the tenant, or under the limited circumstances defined by the Manufactured Home Park Tenancy Act¹. A licensee is not entitled to file an application under the Manufactured Home Park...

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.
- The written contract suggests there was no intention that the provisions of the Manufactured Home Park Tenancy Act apply.

The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.

While a tenancy agreement need not be in writing to be enforceable, there must be evidence of a consensus, or a "meeting of the minds" between the parties as to the terms of the agreement. In the case before me, I find there is insufficient evidence to support a finding that the parties had such an agreement. I note the following:

- The parties disagreed as to the term of the Applicant's occupation of the cabin. The Applicant claimed it was for an indeterminate time. The Respondent stated it was for the summer.

- The parties disagreed as to the space to be occupied. The Applicant stated he had exclusive use of the cabin in which he resided, as well as another for storage. He suggests that by posting a note to the door, he has established exclusive occupancy of the cabin. The Respondent denied any such agreement existed, and further stated that she did not agree to the Applicant using the other cabin for storage.
- No rent was paid by the Applicant to the Respondent. The Applicant claimed that a term of their agreement was that he was to look after the property and protect the Respondent's interests with respect to a pipeline. He further claimed to have worked 500 hours on her property and paid others for their services. The Respondent denied any such agreement existed. Further, the Respondent has retained counsel to oppose the Applicant's claim against the pipeline, which she submits was commenced by the Applicant without her knowledge or consent.

Conclusion

In all the circumstances I find there is insufficient evidence of a tenancy agreement. I find that the parties had a personal relationship, and that occupancy was granted to the Applicant as a result of the Respondent's generosity and concern over the well-being of his grandson. This was a time limited arrangement which was to end at the end of August 2017.

I therefore decline jurisdiction to address the issues between the parties.

As noted earlier in this my Decision, the Respondent has made arrangements for the safe storage of the Applicant's belongings until the end of November 30, 2017.

Any issues related to these items, or other matters arising from the Applicant's occupation of the Respondent's property, are to be addressed in the B.C. Provincial Court (Small Claims Division) or B.C. Supreme Court as the case may be.

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: November 3, 2017

Residential Tenancy Branch