



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, LRE, RR, FF

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the respondent to return the applicant's personal property pursuant to section 65;
- an order to suspend or set conditions on the respondent's right to enter the rental unit, pursuant to section 70;
- an order to allow the applicant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant and her agent and the respondent and his lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The applicant confirmed that her agent has permission to speak on her behalf and the respondent confirmed that his lawyer had permission to speak on his behalf at this hearing.

This hearing lasted approximately 93 minutes in order to allow both parties to fully present their submissions. I note that the applicant's agent spoke for most of the hearing time. The hearing was lengthened by the fact that the applicant's agent continued to interrupt the respondent's lawyer and myself throughout the hearing while we were speaking, despite my warnings. He also repeated the same information continuously, despite the fact that I informed him that it was not necessary to do so.

The respondent confirmed receipt of the applicant's application for dispute resolution hearing package and the applicant confirmed receipt of the respondent's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the respondent was duly served with the applicant's application and the applicant was duly

served with the respondent's written evidence package. Both parties confirmed that they had no objections to me considering the other party's evidence and were ready to proceed with the hearing.

At the outset of the hearing, I asked both parties to provide verbal submissions on whether I had jurisdiction to hear the applicant's application under the *Act*, as the respondent raised the issue in his written evidence.

Preliminary Issue – Joining Future Applications with this Current Application

At the outset of the hearing, the respondent's lawyer sought to have the respondent's future application as well as the applicant's agent's future application heard at the same time as this current application. The respondent's lawyer confirmed that his claim is against both the applicant and her agent. The file numbers for the two future hearings appear on the front page of this decision; one hearing is scheduled for December 12, 2017 and the other for December 14, 2017. The respondent's lawyer stated that his response was the same for all three matters and it was more expeditious to have them heard together.

The applicant's agent opposed the respondent's request, stating that he was not ready to proceed with his own claim or the respondent's claim because they are separate issues and he needed to submit further evidence and he was still within the timelines to do so.

I notified both parties that I could not hear the two future applications because they are separate claims than this current application, involving a different party (the applicant's agent) with different issues. Although the applicant's agent was present at this hearing, he was only prepared to deal with the applicant's claim, not his own. I informed them that the applicant's agent had the right to submit further evidence within the required timelines and to present his application and respond to the landlord's application on the future scheduled dates.

Therefore, both parties are required to attend the two future hearings.

Issue to be Decided

Does the Residential Tenancy Branch ("RTB") have jurisdiction to consider this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the applicant's claims and my findings are set out below.

Both parties agreed to the following facts. The applicant shared the main residence, including a kitchen and bathroom, with the respondent owner of the property from April to July 2017. Sometime around the end of July 2017, the applicant moved into a separate "unit" from the main residence at the same property address, where she continues to reside. In this unit, she no longer resides with the respondent owner and does not share the kitchen and bathroom with him. This current application for orders and compensation is related to the unit, not the main residence that both parties previously shared.

The respondent's lawyer submits that this is not a residential tenancy and I have no jurisdiction to hear this claim because it is excluded by the *Act*. He claimed that the unit where the tenant currently resides is a temporary accommodation in order to ensure that the applicant left the main residence. He stated that he is seeking an early end to tenancy and an order of possession at the future hearing on December 14, 2017, so that the applicant leaves the unit. He stated that there is no written tenancy agreement, there is no rent payable for the unit, there has been no security deposit paid, and the respondent pays the applicant to perform housekeeping duties at \$400.00 per month. He claimed that the applicant rents a "seacan" from the respondent for approximately \$80.00 per month, where she stores her belongings which she removed from the main residence. He maintained that all of the cheques provided to the landlord for the payment of this seacan have been returned for insufficient funds.

The respondent provided a copy of a Supreme Court Order, dated September 6, 2017, which the applicant obtained without notice to the respondent, indicating that the respondent was not entitled to terminate, restrict or disrupt the water supply, power supply or other essential services at the unit. The respondent provided a subsequent Supreme Court Order, dated October 26, 2017, where both parties attended the hearing, indicating that the September 6, 2017 Order was "set aside pending determination of the tenancy issues." The respondent's lawyer confirmed that he attended that hearing and the Judge made no determination as to whether this was a residential tenancy or whether the Residential Tenancy Branch ("RTB") had jurisdiction to hear the matter, the Judge was simply aware that there was a future RTB hearing

scheduled. The applicant's agent agreed that no determination was made by the Court regarding this issue.

The applicant's agent submitted that this is a residential tenancy and I have jurisdiction to hear this application under the *Act*. He claimed that the applicant has a tenancy with the respondent to live in the unit for an indefinite period of time. He initially claimed that it was for a fixed term of one year. Both the applicant and her agent were unsure of the tenancy start date. The applicant's agent maintained that the applicant signed a written residential tenancy agreement to rent the unit for \$600.00 per month and no security deposit was paid. He explained that the respondent stole the applicant's written tenancy agreement so he could not provide a copy for this hearing; the respondent denied stealing the agreement, confirming that none exists. The applicant's agent stated that the applicant has not paid rent to the respondent but has performed cleaning services in lieu, which are worth more than the rent. He agreed that the respondent paid the applicant \$400.00 per month for these services but claimed that one of the payments was short by \$200.00.

Analysis

Since both parties agreed that the applicant has vacated the main residence where she was previously sharing the kitchen and bathroom with the respondent owner, it is unnecessary for me to determine jurisdiction under section 4(c) of the *Act*, which excludes tenancies where an owner and tenant share kitchen and bathroom facilities.

However, I must decide jurisdiction with respect to the unit where the applicant currently resides, as both parties dispute whether a residential tenancy has been created and therefore, whether I have jurisdiction under sections 1 and 2 of the *Act*.

The jurisdiction of the *Act*, and in turn my jurisdiction, is set out in section 2 of the *Act*.

Subsection 2(1) of the *Act* sets out that:

2 (1) Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

"Tenancy agreement" is defined in section 1 of the *Act*:

"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...

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention, no enforceable agreement under the *Act* arises from the relationship.

I find that this relationship lacks the indicia of a tenancy agreement. I find that there is no written tenancy agreement, as the applicant was unable to provide a copy and the respondent denied the existence of a tenancy agreement. The applicant was unaware of the start date of the tenancy. The applicant was unsure of the end date of the tenancy, initially indicating it was for one year and then indicating it was indefinite. No security deposit or rent has been paid by the applicant to the respondent. While the applicant insists that she performed cleaning services for the respondent in lieu of paying rent, both parties agreed that the respondent paid the applicant separately for these services. The Supreme Court of British Columbia has not made a determination as to whether this is a tenancy or whether the RTB has jurisdiction to hear this matter.

For the above reasons, I find that this is not a residential tenancy. This is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the applicant's application.

Conclusion

I decline jurisdiction over the applicant's application.

I make no determination on the merits of the applicant's application. Nothing in my decision prevents the applicant from advancing her claims before a Court of competent jurisdiction.

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 22, 2017

Residential Tenancy Branch