



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, MNSD, FFT
OPRM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Applicant’s Application for Dispute Resolution was made on July 10, 2018. The Applicant applied to cancel a 10-Day Notice for Unpaid Rent or Utilities, to request an order to restrict the Landlord’s access to the rental unit, a monetary order for the return of the security deposit and the return of their filing fee. The Respondent’s Application for Dispute Resolution was made on July 17, 2018. The Respondent applied for an Order of possession, a monetary order for unpaid rent and to recover the filing fee.

Both the Applicant and the Respondent attended the hearing and were each affirmed to be truthful in their testimony. The Applicant and the Respondent were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all the evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Jurisdictional issues were brought up at the outset of the hearing.

The Applicant testified that he is the son of the Respondent and that he pays the Respondent \$1,000.00 a month in rent and had lived in the property since 2014. The Applicant testified that in addition to rent he pays the Respondent for a car loan and a student loan that she had secured for him. The Applicant testified that he has no rent outstanding and that he is upset that the Respondent and her husband accessed the property without giving him proper notice. The Applicant provided copies of his bank statements into documentary evidence.

The Applicant also testified that the Respondent and he had referred to themselves as landlord and tenant in regard to their living arrangement. The Applicant provided copies of the text message history between himself and the Respondent into documentary evidence.

The Respondent testified that she had not intended to have a tenancy agreement with her son and that the funds he gives her are to cover payments for a car she purchased for him, to repay a loan in her name that was used to pay his school fees, and for expenses in the home.

The Respondent also testified that she does live permanently in another location. However, she intended that this condo would be a shared accommodation between her and her son and was never meant to be a rental unit. The Respondent testified that she does stay at the condo for time to time and that she had made it clear to her son that she would retain full access to the property. The Respondent testified that she notifies her son before she comes over as she does not want to catch him in a “compromising position,” but that she had never given him exclusive use of the property. The Respondent also testified that she has furnishings at the property, including a bed, that she uses when she stays there. The Respondent testified that she had let her son stay on the property as she had wanted to help her son out but that she never wanted to be a landlord. The Respondent testified that she supported her son while he was in school but that she can no longer afford to support her adult son financially.

Both parties agreed that there is no written tenancy agreement between the Applicant and the Respondent.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

Section 2 of the Act sets out the limitations on my jurisdiction.

“What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.”

The Act defines a tenancy agreement as the following:

“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;

During this hearing, I heard conflicting verbal testimony from the parties as to whether or not their living arrangement constituted a tenancy agreement.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In order to have a tenancy agreement, there must be the intention of both parties to form a legal relationship of landlord and tenant. Without this intent, there can be no enforceable agreement that would arise under the *Act* from the relationship. In the case before me, there is no written tenancy agreement or other documentary evidence to show that the intent of the parties, had been to form a landlord/tenant relationship. I find that the Applicant has failed to provide sufficient evidence to show that this was landlord/tenant relationship.

Additionally, section 4 of the Act states the following:

“What this Act does not apply to

4 This Act does not apply to
(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,”

I accept the testimony of the Respondent that she retained access and regular use of the property. I find that the Applicant and Respondent share the bathroom and kitchen in this property.

For the above reasons, I find that this is a family matter, not a landlord/tenant relationship. Therefore, the *Residential Tenancy Act* does not apply to this matter, and I decline jurisdiction on both applications.

As I have declined jurisdiction, the Respondent is at liberty to contact the local police to recover possession of the property.

Conclusion

I decline jurisdiction over both parties' applications.

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 7, 2018

Residential Tenancy Branch