



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, PSF, LRE, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the Respondent to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the Respondent to provide services or facilities required by law 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; and
- authorization to recover the filing fee for this application from the Respondent pursuant to section 72.

The Respondent did not attend this hearing, although I left the teleconference hearing connection open until 11:36 a.m. in order to enable the Respondent to call into this teleconference hearing scheduled for 11:00 a.m. The Applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Applicant, their two witnesses and I were the only ones who had called into this teleconference.

The Applicant testified that they witnessed a friend, Witness JT, serve the Respondent with a copy of the Applicant's dispute resolution hearing package on April 5, 2019. During the hearing, Witness JT called into the hearing and provided sworn testimony that they handed the Respondent's spouse the dispute resolution hearing package on

April 5, 2019, at the Respondent's place of business. Witness JT and the Applicant testified that they observed the Respondent's spouse share the document with the Respondent shortly after Witness JT handed the hearing package to the Respondent's spouse. Based on this undisputed sworn testimony, I find that the Respondent was served with this package in accordance with section 89 of the *Act*. Neither party provided any written evidence for this hearing.

Issues(s) to be Decided

Does the agreement between the Applicant and the Respondent constitute a tenancy that falls within the jurisdiction of the *Act*? If so, Is the Applicant entitled to a monetary award for losses and other money owed for withdrawn hydro services during the course of this tenancy? Should an order or orders be issued against the Respondent with respect to this tenancy? Should an order be issued with respect to the Respondent's right to enter the rental unit? Is the Applicant entitled to recover the filing fee for this application from the Respondent?

Background and Evidence

The Applicant gave undisputed sworn testimony that they entered into an oral agreement with the Respondent to rent a three bay garage on a commercially zoned property in September 2017. At that time, the Applicant intended to use the premises as a "workshop" where he would work on his motor vehicles and where he could store them. The Applicant testified that the monthly rent was set at \$700.00, payable in advance on the first of each month plus the Applicant's portion of the hydro, which the Applicant claimed was to be 1/3 of the total hydro costs for the property. The Applicant said that he paid a \$400.00 security deposit at that time.

The Applicant said that this commercial property contained structures used for a variety of purposes, including a convenience store, a house, two three bay garages/shops (both used for the storage of motor vehicles), and a location where another person stored their recreational vehicle.

The Applicant gave sworn testimony, confirmed by the Applicant's Witness DG, that as of December 2017, the Respondent allowed the Applicant to live in a "truck style camper trailer" located inside the three bay garage that the Applicant was already renting. The Applicant said that he needed a place to stay after splitting up with his female friend. The Applicant and Witness DG said that the Respondent agreed to let

the Applicant and his two dogs reside in a camper/trailer on the premises as of December 2017. The Applicant said that the rental terms remained the same, as long as he agreed to remove trees along the property line for the Respondent. The Applicant said that he hired an arborist and incurred \$300.00 in costs to have the Respondent's trees removed. The Applicant said that he connected his trailer to the Respondent's hydro, water and sewer lines so as to enable him to reside in the workshop/garage he had been renting since September 2017.

The Applicant said that the Respondent routinely saved up hydro bills for five to eight months before asking the Applicant to pay his portion of the hydro for the property. The Applicant said that the hydro bills were roughly \$80.00 during the winter months and \$50.00 in the summer months until January 2019. The Applicant said that he always paid the Respondent for these bills when requested.

The Applicant said that in late 2018, another tenant who used some of the Respondent's workshop/garage space apparently approached the Respondent with a request to use the Applicant's workshop/garage space. When the Applicant refused to move, claiming that he had rights that the Respondent was contravening, the Respondent gave him a hydro bill for January for \$400.00, six times higher than had been the case in the past. When the Applicant refused to pay this hydro bill, the Applicant maintained that the Respondent disconnected the Applicant's source of hydro on February 4, 2019.

The application for a monetary award of \$1,680.00 was to seek the recovery of \$30.00 per day for the Applicant's loss of hydro in the rental space he was renting from the Respondent. At the hearing, the Applicant said that his true loss in value was much greater than the amount claimed as he has had to install a generator to supply power to his camper and his storage space. The Applicant also asked for the issuance of an order requiring the Respondent to restore the hydro connection to the rental premises and to accept the Applicant's monthly rent cheques as per the terms of their oral agreement.

The Applicant also mentioned that this relationship has deteriorated to the point where the police have been called on a few occasions.

Analysis -Jurisdiction

Before I can consider the merits of the application, I must first be satisfied that the matter before me is one that falls within the jurisdiction of the *Act*.

In this case, section 4(d) of the *Act* reads in part as follows:

- 4 This Act does not apply to...*
- (d) living accommodation included with premises that*
 - (i) are primarily occupied for business purposes, and*
 - (ii) are rented under a single agreement,...*

While it is best if agreements between landlords and tenants are in writing, the *Act* does allow oral agreements to have legal effect.

In considering this matter, I have reviewed the relevant legislation as well as RTB Policy Guidelines 14 (Type of Tenancy - Commercial or Residential) and 27, which provides guidance with respect to the jurisdiction of arbitrators appointed pursuant to the *Act*.

In this case, the Applicant provided undisputed sworn testimony that they entered into an oral agreement with the Respondent in or about September 2017 for the use of a three bay garage as a workshop/storage space for his motor vehicles located on a commercial property. At that time, neither party had any expectation that the Applicant would use the premises as a residence.

Based on the Applicant's sworn testimony this situation changed in December 2017 when the Applicant approached the Respondent with a proposal that he live out of his truck camper and later a trailer on the premises. While there is undisputed sworn testimony that the Respondent agreed to allow the Applicant to reside there, there is no evidence that the original terms of the agreement were changed. Monthly rent remained the same as did the Applicant's percentage of the overall hydro payments for the property. The Respondent never provided "living accommodation" at all; in fact, the tenant had to bring their own living accommodation, in the form of the camper/trailer on-site in order to make this his residence.

Section 1 of the *Act* provides the following definitions which are of considerable assistance in determining whether the oral agreement between the parties constitutes a residential tenancy that falls within the jurisdiction of the *Act*:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;...

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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 this case, I find that the original intention of the parties was not that these premises would be used as living accommodation by the tenant. By the Applicant's own admission, this is a commercial building, never designed for use as a residence, in a commercially zoned property. Although the structure contained hydro and a bathroom, there was no kitchen, shower or bathing facilities provided. Any such facilities that the tenant has had available to him since December 2017 resulted from the tenant bringing his own facilities onto the property inside his truck camper/trailer. While the Respondent apparently agreed to allow the Applicant to reside on the premises, the Respondent did not charge anything extra for allowing the Applicant to modify his use of the property to enable him to live in a truck camper or trailer. In effect, the terms of the original agreement remain the same. No extra consideration has been provided to the Respondent that would have a significant effect on the oral contract the parties entered into in September 2017.

A landlord under the *Act* bears the following obligations pursuant to section 32(1) of the *Act*: ,

Landlord and tenant obligations to repair and maintain

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...

A finding that this situation constituted a tenancy pursuant to the *Act* would make the landlord responsible for repairing and maintaining the structure, the only residential portion of which would be the tenant's own camper/trailer they brought to the existing building. This would lead to an absurd interpretation of the *Act*, and one which I cannot make.

While I realize that the Applicant is frustrated by his interactions with the Respondent, I can only make determinations that fall within the jurisdiction of the *Act*. The *Act* does not enable me to conclude that an individual's trailer or camper placed inside a bay of a commercial building rented originally as a workshop/storage space on a commercially zoned property constitutes a residential tenancy as defined under the *Act*. I decline to make a ruling on this application as I lack jurisdiction to do so.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the Application for Dispute Resolution.

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: May 16, 2019

Residential Tenancy Branch