



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on July 27, 2019 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified the Notice of Dispute Resolution Hearing package was served on the Tenant by registered mail on August 9, 2019. The Landlord testified it was sent to the Tenant's residential address which the Tenant acknowledged was correct. A Canada Post registered mail receipt was submitted in support of service. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Notice of Dispute Resolution Hearing package is deemed to have been received by the Tenant on August 14, 2019.

In addition, the Landlord testified that a subsequent documentary evidence package was served on the Tenant by registered mail on August 30, 2019. The Landlord testified it was sent to the Tenant's residential address which the Tenant acknowledged was correct. A Canada Post registered mail receipt was submitted in support of service. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the documents are deemed to have been received by the Tenant on September 4, 2019.

The Tenant did not submit documentary evidence in response to the Application.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

There is no written tenancy agreement between the parties. However, the Landlord testified the tenancy began on December 1, 2018 and ended on March 31, 2019. He testified that rent was due in the amount of \$1,000.00 per month. The parties agreed the Tenant did not pay a security deposit. In the absence of a written tenancy agreement, the Landlord submitted two type-written and unsigned letters from J.W. and A.C.

However, the Tenant claimed there is no tenancy agreement between the parties. She characterized the relationship as a business or commercial arrangement. She testified that she was not required to pay rent because she agreed to clear land and perform other tasks for the Landlord. Whether or not these tasks were completed by the Tenant was not clarified during the hearing.

The parties provided oral testimony, presented evidence, and made submissions. In light of my findings below, it has not been necessary to fully describe the evidence and submissions made. During the hearing, the Landlord testified that he claimed less than what he is likely entitled to under the agreement, particularly with respect to utility charges. The Landlord also testified that he permitted the Tenant to use his kitchen and bathroom facilities when he was away as long as they were left in clean condition. Further, the Landlord added that he also permitted the Tenant to cook meals in his kitchen when he was home, which he testified became "very frequent".

Although the Landlord testified the unit was fully functional, the Tenant testified she was not provided with adequate toilet, bathing, or kitchen facilities.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord's claim highlights the challenges raised when parties fail to reduce their agreements to writing. In this case, I find there is insufficient evidence before me to conclude that a tenancy exists. There are several reasons for coming to this conclusion. First, the parties agreed the tenancy agreement was not reduced to writing. The Landlord did not submit copies of correspondence between the parties which might have confirmed an agreement between them. Although the Landlord did submit two letters in support of a tenancy, they were unsigned, and the authors did not attend the hearing. At least one of the letters appears to have been created after the Tenant had vacated the property. Accordingly, I have given the letters no weight. Second, the parties agreed the Tenant did not pay a security deposit. Policy Guideline #9 confirms this is one factor to consider when determining whether a tenancy exists. Third, the Landlord did not provide evidence to suggest that issues with respect to the payment of rent or utilities were raised during the tenancy, such as correspondence requesting payment or copies of notices to end tenancy for unpaid rent or utilities. There is insufficient evidence that these claims were articulated until the Landlord made the Application. Finally, the Landlord testified during the hearing that he was claiming less than he was entitled to under the agreement between the parties. However, if there was a clear agreement between the parties, there is no compelling reason for the Landlord to claim less than what was agreed by the parties. Accordingly, pursuant to section 2 of the *Act*, I find there was no tenancy agreement between the parties and that the *Act* does not apply.

In addition, section 4 of the *Act* conforms that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. In this case, the parties agreed the Tenant lived and slept in a separate structure. However, the Landlord acknowledged during the hearing that the Tenant was permitted to use his kitchen and bathroom facilities while he was away and when he was home. Accordingly, pursuant to section 4 of the *Act*, I find that the parties shared kitchen and/or bathroom facilities, and that the *Act* does not apply to the living arrangement between the parties.

Considering the above, I find there is no tenancy agreement between the parties and that the *Act* does not apply to the living arrangement between them. Therefore, I find I do not have jurisdiction to consider the Application.

Conclusion

I find there is no tenancy agreement between the parties and that the *Act* does not apply to the living arrangement between them. Therefore, I decline to consider the Application for lack of 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: December 5, 2019

Residential Tenancy Branch