



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, RPP

Introduction

This hearing was convened by way of conference call in response to an application filed by the Applicant on October 17, 2019 (the “Application”). The Applicant applied for return of personal property, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Applicant appeared at the hearing. The Respondent appeared at the hearing with the Translator and Legal Counsel. I explained the hearing process to the parties who did not have questions when asked. The Applicant, Respondent and Translator provided affirmed testimony.

The Applicant submitted evidence prior to the hearing. The Respondent did not. Legal Counsel confirmed receipt of the hearing package. Legal Counsel advised that the Respondent did not receive the Applicant’s evidence. The Applicant advised that he did not serve his evidence. I heard the parties on whether the evidence should be admitted or excluded; however, do not find it necessary to detail this here given my decision below.

Legal Counsel advised at the outset that the Respondent’s position is that there was no tenancy agreement between the parties. I therefore heard the parties on whether there was a tenancy agreement in this matter.

Legal Counsel advised as follows. There were attempts to form a tenancy agreement between the parties. There was a discussion about what rent would be, but no verbal agreement reached. The Applicant never paid rent. The Respondent’s position is that the Applicant and his partner lived in the rental unit without permission and were trespassers. The Applicant and his partner moved into the rental unit July 29, 2019.

The Respondent, through the Translator, testified as follows. The Applicant and his partner used to live at the address many years ago and the Respondent treated them as friends. The Applicant and his partner claimed they wanted to rent from the Respondent and the Respondent agreed. However, the Applicant and his partner found excuses not to sign the paperwork. The Respondent did give the Applicant and his partner keys to the rental unit in July. The Applicant and his partner changed the locks the same day. The Applicant and his partner never paid a deposit or rent.

Legal Counsel further advised as follows. From the date the Applicant and his partner changed the locks, the Respondent was unable to remove them from the rental unit. The Respondent left the country for a time hoping the Applicant and his partner would leave the rental unit.

The Applicant submitted that there was a tenancy agreement which ended September 15, 2019.

The Applicant testified as follows. He has texts, messages and emails about a tenancy agreement. He never signed a rental agreement. He never paid a deposit or rent. The Applicant and his partner were under negotiations with the Respondent. A boiler plate tenancy agreement was sent and there were discussions about costs. The Applicant and his partner previously rented from the Respondent in 2018. They became friends with the Respondent. They left the country for a period. When they returned, they spoke to the Respondent about staying with her again. The rental unit house had 18 people in it. The Applicant and his partner were given a back room. The Respondent told the Applicant and his partner that if they moved people from the rental unit, they could stay in the rental unit instead. The Applicant and his partner swapped places with the individuals living in the rental unit. The Applicant and his partner changed the locks to the rental unit because the back door was not secure. He assumes his partner got permission to change the locks from the Respondent, but he did not personally talk to the Respondent.

I asked the Applicant if the parties discussed the Applicant and his partner renting the rental unit, a term for the rental, the rent amount or deposit amount. The Applicant testified that there was no verbal or written agreement about these issues. The Applicant testified that the parties agreed verbally about the first month of rent being free.

I asked the Applicant if he had submitted any documentary evidence about this issue and he advised he did not.

In reply, the Respondent through the Translator testified that she did not ask the Applicant and his partner to move the individuals who were living in the rental unit. The Respondent denied there was an agreement about the first month of rent being free.

As stated in section 2 of the *Residential Tenancy Act* (the “Act”), the Act only applies to tenancy agreements, rental units and other residential property. The RTB only has jurisdiction over matters involving a tenancy agreement.

The definition of “tenancy agreement” is set out in section 1 of the Act and is as follows:

“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 [emphasis added]

A tenancy agreement is a contract and is formed when there is an offer, acceptance and consideration. Consideration is a benefit conferred or loss suffered.

I find based on the testimony of the parties that the parties never reached an agreement about possession of the rental unit. I find this given this was the Respondent’s position and the Applicant acknowledged the parties never came to an agreement about the Applicant and his partner renting the rental unit, a term for the rental, the rent amount or deposit amount. The Applicant acknowledged the parties were still negotiating these issues when the Applicant and his partner moved into the rental unit. The Applicant acknowledged he and his partner never paid a deposit or rent. If the Applicant and his partner had paid a deposit or rent, I would likely have found there was a tenancy agreement as a deposit or rent would be consideration. However, I am not satisfied there was consideration here. In the absence of any monies having been exchanged between the parties and in the absence of any documentary evidence showing there was a tenancy agreement between the parties, I am not satisfied there was. I note that I do not accept that there was an agreement between the parties about the first month of rent being free in the absence of some documentary evidence to support this.

In the circumstances, I find the Act does not apply and the RTB does not have jurisdiction to decide this matter. The Application is dismissed without leave to re-apply. I had told the parties I would decide the jurisdiction issue and reconvene the hearing if I was satisfied there was a tenancy agreement. Given my decision, there is no need to reconvene the hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 11, 2019

Residential Tenancy Branch