



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

On June 17, 2020, the Applicant filed an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the “Act”), for an order for the Landlord to make emergency repairs to the rental unit. The matter was set for a conference call.

The Applicant and two Respondents attended the hearing and were each affirmed to be truthful in their testimony. The Applicant and Respondents were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

Preliminary Matter- Jurisdiction

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

The parties agreed that the Applicant moved into a cottage shared with the Respondents in July 2019 and lived with the Respondents at that location until April 2020.

The parties also agree that in mid-April 2020, the Applicant moved to a second property location, also owned by the Respondents, and started living in a trailer the Respondent had moved on to that property.

The Applicant argued that they had moved in with the Respondents under the understanding that they would eventually move to a second location, also owned by the Respondents, to build and run a small farm.

The Applicant testified that they worked on the second property between July to November 2019, constructing fencing, animal shelters and moved a trailer they planned on eventually living in onto the property.

The Applicant testified that they had a handshake agreement with the Respondents to live at the second property, for 10 years, rent-free, in exchange for the work they would put into the property.

The Applicant testified that in April 2020, the Respondents had told them they needed to move out of the cottage they had been sharing with the Respondents, as that property had been sold.

The Respondents testified that they had no intention of entering into a tenancy agreement with the Applicant at either of the locations they own but agreed that they had allowed the Applicant to live with them in exchange for caretaker work.

The Respondents testified that they had not agreed to the Applicant moving out to the second property location, as that location is still under development and is not habitable at this time.

The Respondents also testified that the cottage they share with the Applicant had not been sold, that they still live there, and the Applicant is welcome to move back, as they never asked the Applicant to leave.

Analysis

Based on the above, the testimony and evidence, 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 license to occupy a rental unit;

Throughout this hearing, I heard conflicting verbal testimony from the parties as to whether or not their living arrangement constituted a tenancy agreement. In cases where 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 this case, that would be the Applicant.

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, no documented exchange of money or any other documentary evidence to show that the intent of these parties had been to form a landlord/tenant relationship. Therefore, I find that the Applicant has failed to provide sufficient evidence to show that this was landlord/tenant relationship.

Additionally, I accept the testimony of both parties that when this living arrangement started, the Respondents and the Applicant lived in the same home, sharing a bathroom and kitchen. Section 4 of the Act states the following regarding shared accommodations:

“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 agreed-upon testimony of these parties that the Respondents are the owners of the cottage, and that the Applicant and the Respondent lived in that cottage together, as of July 2019, sharing a kitchen and bathroom until the Applicant moved out in mid-April 2020. Pursuant to section 4 of the Act, I find that the living arrangement between the Applicant and the Respondent, between July 2019 and April 2020, was not a residential tenancy.

I also accept the testimony of the Respondents that without their knowledge, the Applicant move-out of the shared home, and on to the Respondents' second property without their consent.

I acknowledge the Applicant's witness statements; however, I find that the witness's testimony provided no clarity on the Respondent's intent for this to be a shared living arrangement or a residential tenancy. The testimony of the Applicant, the Respondent and the witness show that these parties clearly expressed an interest in living together at the cottage and eventually at the second property. However, I find that there is insufficient evidence to prove that the Respondents had intended for this to be a landlord/tenant relationship with the Applicant.

Overall, I find that there is no evidence to show that a residential tenancy situation existed between these parties, that would fall under the jurisdiction of the *Act*. For this reason, I find that I must decline to accept jurisdiction over the Applicant's dispute with the Respondents.

Conclusion

For the reasons stated above, I decline jurisdiction to resolve this dispute. I have made no determination on the merits of the Applicants application. Nothing in my decision prevents either party from advancing their 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: July 7, 2020

Residential Tenancy Branch