



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

On August 11, 2020, the Applicant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an order for the Landlord to comply with the Act. The matter was set for a participatory hearing via conference call.

The Applicant and Respondent attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matters

Early in the hearing, the Respondent raised the issue of jurisdiction and questioned whether the Residential Tenancy Branch had jurisdiction over the relationship between the Applicant and Respondent.

The issue of jurisdiction will be the primary subject that is addressed in this Decision. If I find that the Residential Tenancy Branch, in relation to the Residential Tenancy Act, has jurisdiction over this matter, I will also respond to the Applicant’s request for an order for the Landlord to comply with the Act.

Issues to be Decided

Does the Residential Tenancy Branch have jurisdiction over this matter?

Should the Landlord receive an order to comply with the Act?

Background and Evidence

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.

The Respondent provided testimony and evidence as follows:

- The Respondent originally allowed an employee's friend to temporarily move into a storage trailer on his property as the friend (MC) was at risk of becoming homeless and had recently been diagnosed with cancer. The Landlord, out of generosity and compassion, allowed MC to use the trailer in the Spring of 2017.
- The only agreement that the Respondent had with MC was that he could live in the storage trailer until he passed away or found other accommodations.
- Occasionally, when he was able, MC would help with some maintenance on the farm or make some nominal cash payments to cover a portion of the costs for water and hydro.
- In May of 2017, the Applicant moved into the storage trailer with MC without the Respondent's knowledge or consent.
- Upon learning of this, the Respondent asked MC to ask the Applicant to leave. The Applicant did not leave, and the Respondent did not press the issue out of compassion for MC.
- MC passed away on August 9, 2019.
- The Respondent did not receive any money from the Applicant between May of 2017 and 2020.
- Upon MC's passing, the Respondent requested the Applicant to vacate the storage trailer. At that time, and on several occasions since, the Applicant has informed the Respondent that she only needed a couple of months to get her affairs in order so that she could vacate the storage trailer.
- Despite multiple requests by the Respondent over the past year, the Applicant has failed to vacate the storage trailer.
- The Respondent testified that the Applicant paid the Respondent \$1,500.00 approximately 6 months ago to acknowledge his generosity over the last year and to cover costs and utilities.
- On July 1, 2020, the Respondent provided a written notice to the Applicant demanding that she vacate the storage trailer by September 1, 2020.
- The Respondent has never entered into an oral or written Tenancy Agreement with the Applicant.
- The Applicant has never paid a fixed amount to rent the storage container, nor has the Respondent asked for rent.
- The Applicant has never paid a security deposit, nor has the Respondent asked for a security deposit.

- The storage trailer was not intended to be used as a permanent residence, and only as a short-term residence for MC, whom was terminally ill and at risk of homelessness. This generosity was not extended to the Applicant.
- The Applicant is still occupying the storage trailer.

The Applicant provided the following testimony in relation to the issue of jurisdiction:

- The Applicant moved into the trailer with MC in March of 2016.
- She looked after MC while he was sick.
- She occasionally worked for the Respondent by cutting grass in the ditches and around the corn fields
- She paid the Respondent \$1000.00, approximately 3 months ago and another \$800.00 2 months ago in an effort to get caught up with the rent.
- She stated that the Respondent allowed her to stay in the trailer while she and her daughter tried to find a suitable place to move.
- The Respondent charged MC \$500.00 a month to rent the trailer.
- The Applicant acknowledged that she did not pay a security deposit.
- She has no written agreement with the Respondent
- She did not pay any rent to the Respondent after MC passed away in 2019.
- When the Applicant paid the Respondent a lump sum in of \$1000.00 in 2020, she asked for a rent receipt and the Respondent would not give her one.
- She acknowledged that the trailer is not a suitable place to live.

Analysis

Residential Tenancy Policy Guideline #9 – Tenancy Agreements and Licenses to Occupy clarifies the factors that distinguish a tenancy agreement from a licence to occupy.

Under a tenancy agreement, the tenant has exclusive possession of the rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and, the tenant pays a fixed amount for rent.

Based on the testimony and evidence of all parties, I find that a written or oral tenancy agreement has not been established between the Applicant and the Respondent. Both parties agreed there has never been a written Tenancy Agreement between them. The

Respondent provided consistent and undisputed testimony that the Applicant was never welcome on his property and that the only permission that he granted the Applicant was to occupy the trailer until she could get her affairs in order. Although the Applicant inferred that there may have been an oral agreement between the Respondent and MC, she failed to provide sufficient evidence to convince me, on a balance of probabilities, that there were any terms agreed to between the Applicant and the Respondent and further, that she followed through with any such terms; such as the regular payment of a monthly rent.

I find that the Applicant does not and has not paid a fixed amount of rent. Regardless of the conflicting testimony regarding the establishment of a monthly rent between the Respondent and MC; I accept the Applicant's testimony that she did not pay rent regularly nor has she paid a fixed amount of rent.

Under a licence to occupy, a person is given permission to use a rental unit, but that permission may be revoked at any time.

Some factors that may distinguish a tenancy agreement from a licence to occupy include payment of a security deposit or that the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

I find that the Applicant has not provided a security deposit to the Respondent based on both of the parties' testimony.

I accept both the Respondent's submissions that he offered the storage trailer to MC for his temporary use; and, the Applicant's testimony that the Respondent allowed her to stay in the trailer until she and her daughter could find a suitable place to move. As such, I find the Respondent initially allowed MC to occupy the storage trailer based on a personal relationship rather than for business considerations. Furthermore, that the Respondent, although not his first choice, did the same for the Applicant when she asked for a few months to "find a suitable place to move."

In summary, I find that the relationship between the Respondent and the Applicant is not that of a Landlord and Tenant. There is no tenancy agreement, there is no regular payment of rent, nor has a security deposit ever been paid. I find that the Respondent has granted the Applicant a license to occupy the storage trailer and that that permission may be revoked at any time.

To clarify, the Residential Tenancy Branch has no jurisdiction over this matter and the Applicant's request to order the Respondent to comply with the Residential Tenancy Act is dismissed.

Conclusion

As the Residential Tenancy Act does not apply to these parties, 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: September 30, 2020

Residential Tenancy Branch