



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPRM-DR, OPR-DR, FFL**
CNR, OLC, FFT, MNDCT, MNRT

Introduction

This hearing dealt with cross-applications filed by the two opposing parties under the *Residential Tenancy Act* (*“the Act”*).

The first application was filed by the owners of a basement suite and will be referred to as the homeowners. The homeowners applied for:

- An order of possession and a monetary order for unpaid rent or utilities pursuant to sections 46 and 55 of the *Act*;
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55; and
- Authorization to recover the filing fee for this application from the other party pursuant to section 72.

The opposing application was filed by the occupant of the homeowner's basement suite and will be referred to as the suite occupant. The suite occupant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55;
- An order for the homeowner to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee for this application from the other party pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing. The homeowners were represented by counsel, VV. As both parties were present, service of documents was confirmed. Each party

acknowledged being served with one another's Application for Dispute Resolution and stated they had no concerns with timely service of documents.

Issue(s) to be Decided

Are the parties bound by a tenancy agreement?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The homeowner's counsel gave the following submissions. The parties are not bound by a tenancy agreement. In 2018, the homeowner entered into an agreement with a small handyman service to renovate their basement. A copy of the "scope of work" dated October 24, 2018 was provided as evidence by the homeowner. The homeowner also provided copies of money orders and personal cheques to the handyman service to show they were paying thousands of dollars for the renovations.

On June 29, 2019, a final payment of \$1,000.00 was given to the handyman service to finish the work, however the work wasn't fully completed. The landlord testified that the unfinished work was to be work on the storm door and some electrical work. Neither party provided any documentary evidence regarding this "returned" last payment of \$1,000.00. According to the homeowner, the last \$1,000.00 was returned by the handyman to the homeowner as cash which they acknowledge receiving. The homeowner is adamant in stating the \$1,000.00 represents a return of money for unfinished work; it does not in any way represent money paid as "rent".

The homeowner submits that the suite occupant is the handyman they hired to do the renovations in the basement who decided to move into the two-bedroom suite himself, on his own volition.

The homeowner submits that the police were called to remove the suite occupant, however the police would not assist as they deemed the issue to be civil, not criminal in nature. When the suite occupant moved himself in, the suite didn't have any appliances purchased or installed. The lack of appliances is further proof that the homeowner did not enter into a tenancy agreement with the suite occupant, according to the homeowner.

The homeowner did not accept any security deposit from the suite occupant, as they have never recognized him as a tenant. The homeowner has steadfastly refused to accept rent money from the suite occupant as they understand doing so would constitute a tenancy with this person. The homeowner testified that the only reason the suite occupant has a key is because the suite occupant had one to do the renovations to the basement suite.

The homeowner served the suite occupant with a notice to end tenancy for unpaid rent or utilities on October 26, 2020 by posting it to the door of the suite. The homeowner provided a proof of service document. A copy of the notice to end tenancy was also provided. It states the "tenant" failed to pay rent in the amount of \$1,700.00 that was "due" on October 1, 2020.

The homeowner's counsel submits that although there is no tenancy agreement in place between the parties, the estimated "rent" for the rental unit would be approximately \$1,300.00 per month. If there were a tenancy agreement, an additional \$400.00 per month would be an appropriate estimate to pay for utilities. This is how the homeowner was able to justify serving the suite occupant with a notice to end tenancy for unpaid rent or utilities in the amount of \$1,700.00.

Lastly, the homeowner submits that they did not take a security deposit from the suite occupant or perform a condition inspection report with him when the suite occupant took occupancy of the unit. The only money exchanged between the parties is the homeowner paying the handyman service (the contractor employing the suite occupant as a subcontractor) to renovate the unit. The \$1,000.00 cash received by the homeowner from the suite occupant was a return of payment for work left incomplete. The only reason the suite occupant has a key to the basement unit is because he was working on it during renovations.

The suite occupant gave the following testimony. He is a sub-contractor, hired by the handyman service. He acknowledges that the "scope of work" document provided by

the homeowner was handwritten by him, however the work was completed two years ago.

He testified he called the homeowner on September 6, 2020 telling her he was interested in renting the basement suite. The homeowner responded saying it was available for rent. On September 10th, he met the homeowner and the parties agreed that he could rent the suite at \$1,000.00 per month for the first 3 months, then \$1,500.00 after that. He agreed that the landlord would supply the appliances later on.

The suite occupant testified that he signed a tenancy agreement with the homeowner. The homeowner gave him a copy of the tenancy agreement, however he misplaced it during the move and has not been able to relocate it. He gave the homeowner \$1,000.00 as rent for the period of September 15 to October 14, 2020. The day the tenancy agreement was signed, the homeowner couldn't find the keys to the suite, so he left, agreeing to get them a couple of days later.

The suite occupant testified that when he moved in, there were no appliances. The homeowner wanted to find a good deal on appliances but promised the suite occupant that they would be installed before he moved in. On Sunday (date not specified), the homeowner called the occupant and told him she no longer wants to rent to him. The occupant told the homeowner he couldn't go back to the place he just vacated, so he continued to move into the basement unit owned by the homeowner. Afterward, the occupant went out and purchased appliances on his own then billed the homeowner for them using the same invoices as the handyman services he purported to sub-contract for.

The suite occupant testified that on October 10th, the police were called and questioned him about living there and being a squatter. The suite occupant told the police that he has a key and he paid rent, leading the police to determine the suite occupant is a tenant. The suite occupant testified he's repeatedly tried to pay rent to the homeowner but the homeowner has refused to accept the rent. He's tried calling multiple times but the homeowner doesn't answer his calls.

On October 24th, the occupant received the notice to end tenancy but states it's baseless and makes no sense. The amount claimed is wrong, since he paid rent of \$1,000.00 covering September 15 to October 14th. There is no way he failed to pay the \$1,700.00 that was due on October 1st.

The suite occupant argues that the renovations were completed close to 2 years ago, pointing to the homeowner's copies of money orders and cheques given to the handyman service he subcontracted for. The last renovation work was done on June of 2019. There was a tenancy agreement with the homeowner and if he hadn't misplaced his copy of it, he would be able to prove it existed.

Analysis

Part 2, Division 1 of the *Residential Tenancy Act* outlines how to go about creating a tenancy agreement. [Section 1](#) of the *Act* also defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.

Residential Tenancy Branch Policy Guideline PG-9 [tenancy agreements and licenses to occupy] states:

Under a tenancy agreement, the tenant has exclusive possession of the site or 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.*

In this case, the homeowner presents an argument that there is no agreement, oral, expressed or implied, between the homeowner and the suite occupant. He submits that there are no circumstances that suggest that a tenancy has been created.

The suite occupant says those circumstances do exist. He has a key to the basement suite. He has given the homeowner \$1,000.00 which he says constitutes payment of his first month's rent, from September 15 to October 14th. Lastly, he testified that the parties signed a tenancy agreement and he had a copy, albeit lost during a move.

Taking the suite occupant's facts, I find it altogether possible that he obtained the key through his work as a subcontractor working on the suite. The fact that the homeowner started working on the suite 2 years before he took possession of the suite, I find to be irrelevant as the evidence clearly shows the unit was not ready for occupation when he began to occupy it. It is reasonable to conclude that the homeowner wouldn't change the locks when there was no prior tenant living in the unit who may be able to access it with a key.

Second, there is dispute between the parties regarding the nature of the \$1,000.00 payment. I find the suite occupant's version of events less likely to be closest to the truth as exchanging such a large amount of money without a receipt to show what it represents is beyond reasonable. It was questionable from the beginning whether the parties were trying to establish a tenancy, so giving cash to the homeowner without verification of what it represents goes to prove nothing. The parties remain divided on the purpose of the cash payment.

Lastly, the suite occupant testified there was a tenancy agreement, while the homeowner denies one was ever drafted. Given the circumstances regarding the relationship between the parties where work was done in accordance with a "scope of work" document, and payment was exchanged as the work was completed – I find the homeowner would have likely drafted a formal tenancy agreement with the suite occupant, had one existed. I find the suite occupant has provided insufficient evidence to satisfy me one existed.

The homeowner submits that the market rate for the rent should be approximately \$1,300.00 per month and utilities should be approximately \$400.00 and these figures are what the homeowner used in serving the suite occupant with a 10 day notice to end tenancy for unpaid rent or utilities. However, the homeowner makes the argument that there is no tenancy between the parties. For me to find the suite occupant is in breach of the tenancy agreement or the *Act* in failing to pay rent on time, I must be in a position to determine that a tenancy agreement exists.

13(2) of the *Act* states:

A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- a) the standard terms;
- b) the correct legal names of the landlord and tenant;
- c) the address of the rental unit;
- d) the date the tenancy agreement is entered into;
- e) the address for service and telephone number of the landlord or the landlord's agent;
- f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;

- (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;
- (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
- (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
- (vi) which services and facilities are included in the rent;
- (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

In the case before me, I cannot determine any of the required items listed in section 3(2)(f). Even if this were an oral, expressed or implied tenancy agreement, none of the established factors can be determined. Not even the amount of rent payable or when it is due. Those two factors form the basis for the issuance of the notice to end tenancy for unpaid rent.

Section 6(1) of the *Act* states:

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this *Act* are enforceable between a landlord and tenant under a tenancy agreement.

Section 62(1) states:

Director's authority respecting dispute resolution proceedings

62 (1) The director has authority to determine

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this *Act* or a tenancy agreement.

Based on the foregoing, I find that there is no tenancy established between the parties. As such, I find the parties are not bound by the *Residential Tenancy Act* with the roles of landlord and tenant. I decline to adjudicate this matter as I find I do not have the authority to determine this dispute as this dispute did not arise under the *Residential Tenancy Act* or a tenancy agreement.

Conclusion

Jurisdiction to determine this dispute is declined as this dispute did not arise under the *Residential Tenancy Act*.

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: January 28, 2021

Residential Tenancy Branch