



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the applicant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring a landlord to comply with the Act, regulation, or tenancy agreement; and
- recovery of the filing fee.

The applicant and the respondent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. In addition, both parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance and Enforcement Unit for the purpose of an investigation. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Due to the evidence submissions of the parties, I informed the parties that I would consider whether I had jurisdiction to decide this dispute. The hearing began with a discussion of jurisdiction.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to resolve this dispute?
2. If so, is the applicant entitled to a cancellation of the Notice, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and to recover the cost of the filing fee?

Background and Evidence

The applicant submitted that he is a tenant and the respondent submitted that the applicant was not a tenant and no tenancy was ever formed or agreed upon.

The applicant stated the following:

In support of his position that a tenancy existed between the parties, the applicant submitted that he came to live in the residential property on August 16, 2016, when he was contacted by the respondent to provide security for the property. The applicant said that this request was due to an emergency.

The applicant confirmed that he has never paid rent or a security deposit, and that when the respondent came to the property a week later, he told him to stay there rent-free.

The applicant wrote that he is owed \$17,800 for providing security services at the property in question from August 16, 2016 through January 17th, 2021, as well as for improvements made.

The applicant wrote that the respondent received over \$125,000 in extra funds due to the improvements made, in the sale of the property.

The applicant wrote that he placed a "C.P.L." on the property in question.

The applicant provided a Notice of a Civil Claim filed in the Supreme Court of British Columbia, claiming funds for commission fees, compensation for services performed, and other special damages, among other things.

The respondent stated the following:

In support of his position that no tenancy existed between the parties, the respondent submitted that they never came to any agreement about a tenancy, that the applicant has never paid rent, and that their agreement was that the applicant would stay in the home for free until he, the respondent, either sold or rented the property.

The respondent said the property has now been sold, and the applicant's presence for security is no longer required. The respondent submitted that the applicant has removed his personal property from the premises.

The respondent wrote that he has known the applicant for 20 years and has been a friend of his parents for longer than that.

The respondent wrote that he purchased the property in question, his childhood home, from his parents in 2007, where he lived for many years before renting it out. In September 2016, the existing tenants abandoned the property, and as he was expecting the first of his two children at that time, he was not up to re-renting or selling the property. Because he thought a presence in the home would be better, the respondent said he offered the home to the applicant on a temporary basis, rent free, until it was sold or rented. The respondent wrote that he thought the family friend would be happy to have a place to stay rent free and that the respondent mentioned on numerous occasions that he would leave the property at a moment's notice.

The respondent wrote that although he thought originally that the applicant would just stay in the home for a few months, his stay was extended due to the two pregnancies and two children being born. The respondent submitted that the applicant never brought in big furniture or have other people stay in the house. The respondent said that he would frequently stop by to see how the applicant and the house were doing, and the applicant never took issue with the respondent accessing the property.

When the house was close to selling, the respondent asked the applicant if he needed any notice, and he confirmed no notice was needed. It became apparent shortly thereafter that the applicant would not be moving.

The applicant denied he was a family friend.

Analysis

Section 6 of the Act authorizes me to resolve disputes between landlords and tenants.

In order for me to hear this dispute, the applicant must show that the Residential Tenancy Act applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord and tenant relationship.

Residential Tenancy Policy Guideline 27 states that the Residential Tenancy Branch does not have the authority to hear all disputes regarding every type of relationship between two or more parties. The jurisdiction conferred by the Legislation is over landlords and tenants.

In determining whether there is a tenancy, Tenancy Policy Guideline 9 provides information. A tenancy agreement under the Act is 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.

Further, under a tenancy agreement, a tenant is granted 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.

Other factors that may distinguish a tenancy agreement from a licence to occupy include:

- payment of a security deposit;
- the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.

An arbitrator will weigh all the factors for and against finding that a tenancy exists.

In this case, I find that a tenancy was never formed between the parties. I find the applicant lived at the property in question since September 2016, and by the applicant's own evidence, his presence in the property in question was to provide security services, and not as a tenant.

The undisputed evidence is that the applicant has never paid rent and did not pay a security deposit. The applicant presented no evidence that he had the right of exclusive possession of the property.

I was not provided any evidence that a consensus was ever reached between the parties that a tenancy agreement was contemplated or agreed upon.

I also find on a balance of probabilities that the parties had some type of personal relationship as otherwise, there would be no reason for the respondent to offer the home to the applicant in an emergency situation, rent-free.

For the above reasons, I therefore find that the applicant and respondent had not entered into a tenant-landlord relationship.

As the evidence does not establish that the applicant and respondent have entered into a tenancy agreement, I cannot conclude that they have a landlord and a tenant relationship.

As a result, I find I do not have authority to resolve this dispute and, as a result, I dismiss the Application for Dispute Resolution in its entirety.

The applicant and respondent are at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I do not find the Residential Tenancy Act applies to this dispute and I have declined 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: May 14, 2021

Residential Tenancy Branch