Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC

Introduction

The Applicant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- An order for monetary compensation pursuant to s. 67; and
- An order for compensation pursuant to s. 51 after receiving a notice to end tenancy for landlord's use of the property.

J.S. appeared as Applicant and had support from R.C.-A.. The Respondent was represented by counsel, J.C.. G.S. appeared as Respondent. L.V.B. was called as a witness by the Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Respondent acknowledged receipt of the Applicant's Notice of Dispute Resolution and evidence and raised no objections with respect to service. Similarly, the Applicant acknowledged receipt of the Respondent's evidence and raised no objections with respect to service. Accordingly, I find that pursuant to s. 71(2) of the *Act* both parties were sufficiently served with the other party's application materials.

Issue(s) to be Decided

1) Do I have jurisdiction to determine this dispute?
2) Is the Applicant entitled to an award for monetary compensation?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

At the outset of the hearing, the Respondent advised that it was their position that I did not have jurisdiction to hear the present dispute.

The parties confirmed the following details with respect to the parties' arrangement:

- The Applicant moved to the subject property on May 1, 2021;
- The Applicant was to pay rent of $650.00 on the first day of each month;
- No security deposit or pet damage deposit was taken by the Respondent; and
- The Applicant vacated the property on October 24, 2021.

There is no written agreement between the parties.

In the Respondent's telling, the agreement was for the Applicant to lodge two-horses at the property and store her personal belongings, which included a horse trailer and an RV trailer. The Respondent says these belongings along with others and three horses were moved to the property on May 1, 2021. The Respondent further says that the Applicant told them that she would stay in her RV trailer on the evening of May 1, 2021 to ensure her horses were adjusted to their new accommodation. According to the Respondent, the Applicant never left until October 24, 2021 despite their understanding that she would only be storing the horses and her personal belongings.

The Tenant denies this and indicates that it was always the agreement that she would stay at the Respondent's property until she could secure alternate accommodations. The Applicant acknowledged that it was always intended that the arrangement would be short-term.

The Applicant says that the Respondent ran a water hose and extension cord to her RV trailer such that she could have services during her stay. The parties agree these services were provided on May 1, 2021. The Respondent says that the services were provided because the Applicant said she had birds in the RV trailer that needed heat and that she wanted to take showers in the RV when she visited her horses. This is denied by the Applicant.

The Respondent says that he and his wife felt a degree of empathy for the Applicant, who had suffered a series of personal tragedies that left her in a vulnerable position. The arrangement was intended, in the Respondent, to provide assistance to the Applicant.

The parties referred me to a series of text messages between the Applicant and the other named Respondent, S.S.. I reproduce some of the exchanges below and I have anonymized personal identifying information in the interests of privacy. The reproductions are in original spelling and no corrections were made.

The following exchange is from June 14, 2021:

S.S.: Hi there. So [G.C.] and I have been discussing what the future could look like with you here. The whole was just a temporary offering. Without any thought to the future and what it would look like. The reason I am texting it is so my words aren't minced in any way. And also so you and I have it all in writing. 1st of all. The original reason [G.C.] was building the second paddock was so we could have a couple horses here to board, to off set our horse expenses. If you plan to stay longer than September 30th 2021(5 months), as of Oct 1st we are keeping your rent at 650.00, but expect 375.00 for your 3 horses. That is half of what self board would cost you anywhere else., So your rent will go up to 1025.00 for you and your horses. 2nd you will need to have a propane heater, as we cannot heat your trailor with our electricity. We have had problems with freezing water in past winters and do not know how your trailor or the water line to your trailor will handle cold temperatures.we cannot guarantee your water will not freeze. And you will need to deal with any issues you may be up against. 3rd, you will need to pay your portion of the hydro, you may have propane heat but everything else will still be affecting our Hydro bill. We will compare each 2 month cycle and expect the difference. I hope this all sounds fare to you, we are just trying to keep all fair and honest. I hope you have found your next home before the winter but we are preparing for eventualities as my be. Take care and think about all we have laid out.

J.S.: [indiscernible]
Yes I am trying to find a place to buy. trying to find cosigner as well. looked at 4 places since I’ve been here.
[indiscernible]

S.S.: Awesome, and we do know you would love your forever home ♥

J.S.: Tomorrow would be nice. Sorry if I have put u out… thank u for letting me stay.
[indiscernible]

S.S.: You are not putting us out ♥

The following exchange is from June 24, 2021:

J.S.: I need receipts for rent for my account….thank u
Glad ur hay n family stuff goin well
Also $50 towards hydro for may
[indiscernible]

S.S.: So, we said this was a temporary situation for you and yours horses as you had nowhere to live. There will be no receipts. I feel like you have fyou have any idea rrrrrerrreeeeeerrrrreeeeeeeeeeeeeerrrrrrrr4ee

J.S.: Wasn't trying to cause grief…was only a question…too tired for confrontation…

S.S.: I am not here to cause you grief. We don't have any problem with you but we want things to be friendly cordial [J.S.], we don't want to feel like you are building resentments we don't have any idea about . We aren't thinking things or being angry behind your back. We are letting you have your space and live. We are busy busy, we both work and our animals and kids and family take all our time.

Finally, the parties both referred to the following message sent by S.S. to the Applicant on June 25, 2021:

Hi again. So let's clear up this misconception. You are giving us 650.00 per month. This is not rent. It covers the space we would be using for others things. You are paying hydro as you must know all those plants, horses and trailor, outside shower all need need hydro to work, heat, fans, watering etc etc. This contribute to the costs here. It is not rent. Also we had the idea of a paddock and

> shelters but we spend hundreds of dollars to rush it so you would have what you needed for your horses. So your 650.00 is also helping with expenses we had to invite to have you here. I had no idea you would move here so fast. Ok ... you understand? And I am going to tell you the [municipality] has questioned us and they know this is temporary to help you out. We are not allowed to have you here. So there will be no RENTING situation. But if this was a renting situation. It would be 650.00 pad rent, hydro and water costs on top of that. And it would be an extra cost for your green house and your trailor as well. Then your horses would be 300.00 per month for self board. So we are at 1550.00 per month plus hydro and water. And also we would want 50.00 per month for your green house space and your trailor space. So 1650.00. plus hydro and water ..... please understand this is a helping out situation only.

The Respondent says that the property is not zoned for this use. The Applicant does not refute this and argues that property zoning is not determinative.

The Applicant says that she continued to pay $650.00 per month and paid the requested $1,025.00 in October 2021. The Respondent denies that the Applicant paid $1,025.00 for October 2021. The Applicant provides copies of ATM withdrawals slips, two of which dated September 29, 2021 add to $1,025.00, which the Applicant says was her rent for October.

With respect to the Applicant’s monetary claim, she seeks return of her October 2021 rent, return of a $50.00 deposit, $250.00 for the replacement cost for hay, and $700.00 for the costs associated with moving that she says were under urgent circumstances.

The Applicant says that part of her arrangement with the Respondent was that she could store hay. She says that her hay had to be stored outside the barn under a tarp and turned to rot due to the storage conditions.

The Respondent says that the Applicant had access to indoor storage in an outbuilding but that it was used primarily to store her personal belongings. As an interim solution, the Applicant stored her hay in the space that the Respondent usually stores hay. The Respondent says that they replenish their personal hay stores at the beginning of July every year such that the space they typically use could be used by the Applicant as an interim solution. The Respondent says that they offered the Applicant a loft space, but that the Applicant declined to use the space.

With respect to the $50.00, which the Applicant describes as a deposit, it appears that this was in relation to a payment of this amount for utilities in May 2021. The parties confirmed at the outset of the hearing that no security deposit was paid.

The Applicant says the Respondent began to confront her on when she might be vacating the property. She says that S.S. opened the door to her trailer to ask when she would be leaving.

There was discussion of an incident that took place on October 9, 2021. In the Applicant's telling, the Respondent came to her unit to ask her to sign some papers and matters escalated. The Applicant described the Respondent as very aggressive on that occasion. Eventually, the Applicant called the RCMP.

The Respondent denies the October 9 incident occurred as described by the Applicant and denies yelling at her. The Respondent issued a Two-Month Notice to End Tenancy to the Applicant on that date. L.V.B. went with the Respondent on that date to act as a witness.

L.V.B. says that he went with the Respondent to witness service and says that the Applicant refused to acknowledge anything when the Respondent attempted to discuss matters with her. As he describes it, the Applicant was "being ignorant", though did not provide specifics on what that meant. L.V.B. acknowledges that the Respondent was angry on October 9 but remained restrained, though he says that was understandable given the Applicant's ignorance.

The Respondent mentions an incident where the Applicant told him that if he touched her stuff she would shoot him. L.V.B., who overheard this comment, confirmed that the Applicant said this to the Respondent. The Applicant denies this.

The Applicant says that the RCMP attended the property again on October 24, which is the day the Applicant vacated the property. The specifics of the incident are unclear but in the Applicant's evidence, she provides a written chronology that says the Respondent was yelling at the Applicant and the friends that were helping her telling them to get off his property.

The Applicant says the deteriorating situation caused her to vacate the property on an urgent basis. She seeks the cost of her moving due to her feeling forced off the property by the Respondent.

Analysis

The Respondent argues that I do not have jurisdiction to determine this dispute.

Policy Guideline #9 provides guidance with respect to distinguishing between tenancies and licences to occupy. Under a tenancy agreement, a tenant has exclusive possession of a rental unit or site for a specific term. Under a licence to occupy, a person has permission to use a rental unit or side, but that permission may be revoked at any time. The Residential Tenancy Branch has jurisdiction to determine disputes with respect to tenancies but does not have jurisdiction to determine disputes with respect to licences to occupy. Whether a tenancy exists or not turns on the parties' intentions and the facts of each case.

Policy Guideline 9 states the following:

> 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.

Once an applicant establishes the basic incidents of a tenancy, it forms a rebuttable presumption that there is a tenancy. The onus then falls of the respondent to show that there is not tenancy.

The parties do not have a written agreement with respect to their arrangements. However, that is not determinative under the circumstances.

The Respondent argues that the original bargain was that the Applicant could store her personal belongings at the property and stable two horses. The Applicant was not supposed to stay at the property, according to the Respondent. Regardless of the parties intention in May 2021, there was a clear meeting of the minds in June 2021 as evidence by the parties text message exchange.

I place significant weight in the text message sent by S.S. to the Applicant on June 14, 2021. In that message, the Respondents clearly acknowledge that the Applicant is residing in her trailer at the property, that she could stay until September 30, 2021 with rent at $650.00, and that they expected an additional $375.00 beginning in October 1, 2021. S.S. states: “So your rent will go up to $1,025.00 for you and your horses” (emphasis added). The message makes further mention of plans over the winter months if the Applicant were to stay past that point.

I pause to note that neither party says that the Applicant resided in a cabin as listed by the Applicant in her application. The application was made under the *Residential Tenancy Act*. This is an error on the Applicant’s part. If there is a tenancy at all, it would be under the *Manufactured Home Park Tenancy Act* given that the Applicant owns the RV trailer and had it parked on the Respondent’s property.

I find that the Applicant had exclusive possession of the pad where her RV trailer was parked, that she paid rent in the fixed amount of $650.00, and that rent was to be paid monthly, indicating a specific monthly term for the Applicant’s exclusive occupation. Given these findings, there is a presumption of tenancy that may be rebutted by the Respondent.

The Respondent argues that the parties’ arrangement was temporary in nature and that they permitted the Applicant to store her belongings at the property until she found another place. The Applicant acknowledges that the arrangement was meant to be temporary.

Policy Guideline 9 lists various factors to consider under the circumstances. These include:

- Whether the home is a primary residence, with features of permanence being service and facilities meant for permanent housing; permanent features, such as a deck, carport, or skirting; the purported tenant lives there year-round; and the home has not been moved for some time.
- In circumstances with RV trailer parks or campgrounds, the passage of time can be relevant such that the RV has been occupied for a long continuous period.
- Payment of a security deposit.
- A personal or family relationship and occupancy is given because of generosity rather than business considerations.
- Property zoning may be relevant, though property zoning on its own is not determinative.

There is no question that the RV trailer was the Applicant's primary residence over the relevant period despite its lack of permanent features. Neither party argued that the Applicant had another residence from May 1 to October 24.

Neither party directed me to the relevant municipal bylaw for the property's use. However, the Respondent says that the property is not zoned for site rentals. The Tenant does not dispute this but argued that this question is not determinative. Despite the lack of documentary evidence on the relevant bylaw, I accept the uncontradicted evidence of the parties that the property is not zoned for site rentals.

Though the property is not a campground, I would note that the Applicant had not been residing at the property for a long continuous period. Indeed, both parties acknowledged that the nature of the arrangement was such that the Applicant would be there short-term. As set out in the parties' text message exchange, this would be until the Applicant found more permanent accommodations.

The parties both acknowledge that no security deposit was paid by the Applicant to the Respondent. There is mention of $50.00 deposit return by the Applicant in her application. However, at the outset of the hearing she acknowledged not paying a security deposit to the Respondents. The $50.00 appears to be a payment for utility usage.

Finally, the parties are not family. However, I accept the Respondent's evidence that they permitted the Applicant to stay at the property over a short-period due to her challenging personal circumstances. The rental appears to have been driven, at least in part, by the Respondent's generosity and the Applicant's challenges at that time.

Weighing these factors, I find that the Respondent has demonstrated that the parties' arrangement was not a tenancy. I place significant weight on the parties understanding that the arrangement would be short-term until the Applicant found a new place. I further place weight on the fact that the Respondents took the Applicant onto the property to assist her during personal life challenges. Though rent was paid, there was not security deposit and the property is not zoned for the rental of a site. The RV trailer did not have permanent features and the services it did have were temporary in nature despite it being the Applicant's primary residence during that period. An extension cord and a garden hose do not indicate anything approaching proper services for a site, particularly over the winter months.

I am satisfied that the Respondent rebutted the presumption of tenancy. Accordingly, I find that there is no tenancy and the Applicant resided on the property subject to a licence to occupy the site. I do not have jurisdiction to determine this dispute.

I would note that I do not consider the Respondent's issuance of a Two-Month Notice relevant or determinative. A party can no more attorn to the jurisdiction of the Residential Tenancy Branch by mere act of issuing a notice to end tenancy than it can avoid it with words to that affect in a tenancy agreement. It is a question of fact on whether there is a tenancy or not. As noted above, I find that there is no tenancy.

Conclusion

I find that I do not have jurisdiction to determine this dispute. Accordingly, the Applicant's claims are dismissed.

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: February 11, 2022

Residential Tenancy Branch