



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing was convened as a result of the Applicants' Application for Dispute Resolution, made on December 1, 2021 (the "Application"). The Applicants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for landlord use of the property.

The Applicant P.M. and the Respondents attended the hearing at the appointed date and time. At the start of the hearing, the parties discussed if the Act applies to their living situation.

The parties agreed that they do not have a written or verbal tenancy agreement between them. The parties agreed that the Applicant P.M. is the Mother of the Respondent O.G. The parties agreed that the Respondents have occupied the Applicant's property over the past 9 years. The Applicant stated that the arrangement between the parties has changed from the Respondents being permitted to park their trailer on the property, to the Respondents being permitted to occupy the home temporarily until they find their own suitable living accommodation. The Applicant is seeking for the Respondents to leave the property.

The Respondents stated that they have completely renovated the home, paying roughly \$30,000.00 in upgrades on their own. The Respondents confirmed that they are not required to pay rent and were not required to pay a security deposit. The Respondent stated that this is a family dispute and that they wish to stay in the home.

Analysis

Section 1 of the Act defines:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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 licence to occupy a rental unit;

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.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

According to the Residential Tenancy Policy Guideline 9: Tenancy agreement is defined in the *Residential Tenancy Act* (RTA) as 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.

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.

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 accept that the Applicant is the Mother of the Respondent O.G. I accept that the parties had an arrangement relating to the rental property, where the Applicant permitted the respondents to occupy a home located on the property for a temporary basis. I find that this arrangement is more of an act of kindness amongst family members rather than a residential tenancy or a license to occupy. Given that the Applicant and Respondents agreed that there was no expectation of rent or a security deposit being paid, I find that that the Act does not apply to this dispute.

I find that the *Act* does not apply to the living arrangement and therefore I have no jurisdiction to hear the dispute. The Application for Dispute Resolution is dismissed without leave to reapply.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicants should seek legal advice from their lawyer as to how to resolve this dispute.

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: March 17, 2022

Residential Tenancy Branch