



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OL

Introduction

This hearing was convened as a result of the Applicants' application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause dated May 13, 2022, pursuant to section 55; and
- another issue that is not listed in the application.

Three of the Applicants, JDM, DAT, and RSB, attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Jurisdiction Issue

The Applicants in attendance testified that they and the other Applicants are owners as tenants in common of the property where the dispute address is located. The Applicants explained that the Respondent is a former owner who sold his share in the property in 1988, but never left and has been squatting on the land since. The Applicants stated that the Respondent built a two-storey cabin on the property, a cabin that the Respondent lives in, as well as multiple outbuildings when the Respondent had been an owner. The Applicants estimate the value of the Respondents' improvements to be worth around \$70,000.00 to \$80,000.00. The Applicants stated that in recent years, the Respondent constructed another building for his tractor, worth approximately \$11,000.00.

The Applicants argued that the owners have a tenancy agreement with the Respondent because the buildings constructed by the Respondent are assets to the property, and would be considered payment legally, so they are not able to remove the Respondent as a squatter.

The Applicants acknowledged that the Respondent has not paid and does not pay for any of the expenses related to the property, such as property taxes. The Applicants stated that there was never a formal agreement. The Applicants stated that the owners had just let the Respondent stay there because of the building assets he had contributed. The Applicants argued that these assets form the Respondent's "share" towards living on the property.

The Applicants explained that they are newer owners who bought shares in the property separately. The Applicants stated that the longest owner among them has owned a share of the property for 17 years.

The Applicants testified they issued the One Month Notice and made this application because the Respondent is violent, belligerent, and harasses other owners to the extent that police involvement is needed. The Applicants submitted a copy of an "option letter" with proposed terms that the Respondent refused to sign.

In this case, I find it is necessary to first consider whether I have jurisdiction to determine this dispute.

Section 2 of the Act states as follows:

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.

Section 1 of the Act defines a "tenancy agreement" 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 section 1, "rental unit" means "living accommodation rented or intended to be rented to a tenant".

Based on the evidence presented, I am unable to conclude that the cabin in which the Respondent resides falls under the definition of a "rental unit" under the Act. I find the cabin would have been built by the Respondent for his own use. I find there is insufficient evidence to suggest that the Respondent does not consider himself to have any ownership interest in the cabin.

Furthermore, I find there is insufficient evidence to suggest that there was any verbal or implied agreement between the Respondent and the original owners, and what the terms of that agreement might have been. In order for there to be an enforceable contract, there must be an agreement of the parties, or *consensus ad idem*, a "meeting of the minds" as to the terms of the agreement. I am unable to find that the Respondent and the original owners had agreed on any specific conditions for the Respondent to stay on the land or the duration of the Respondent's stay. I note that pursuant to section 4(i) of the Act, the Act would not apply to living accommodation rented under a tenancy agreement that has a term longer than 20 years.

I am also unable to accept the Applicants' argument that the structures built by the Respondent constituted consideration for a tenancy. I find on a balance of probabilities that the Respondent had built the structures on his own initiative and the owners did not take issue with the Respondent doing so.

Based on the foregoing, I am unable to find that the Applicants had assumed any tenancy agreement with the Respondent upon becoming owners of the property. I find the Applicants have not been able to reach any new agreement with the Respondent either, as the Respondent refused to sign the Applicants' option letter.

In the absence of any tenancy agreement between the Applicants and the Respondent, I conclude that the Act does not apply in the circumstances.

My authority is only with the Act, and since the Act does not apply, I decline jurisdiction to hear and decide any matters relating to this dispute.

Conclusion

For the reasons set out above, I decline jurisdiction with respect to 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: November 09, 2022

Residential Tenancy Branch