



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, PSF, AS, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant August 29, 2022 (the “Application”). The Applicant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities
- For compensation for monetary loss or other money owed
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- To be allowed to assign or sublet where the Landlord's permission has been unreasonably withheld
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Applicant appeared at the hearing with their Advocate. The Agent for the Respondent appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Service

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed receipt of the hearing package. The Agent testified that the Respondent did not receive the Applicant’s evidence. The Applicant testified that they

posted their evidence to the Respondent's door 15 days before the hearing. The Advocate confirmed they witnessed the Applicant post their evidence to the Respondent's door.

The Applicant confirmed receipt of the Respondent's evidence.

I accept the testimony of the Applicant that they posted their evidence to the Respondent's door 15 days before the hearing because the Advocate witnessed this and confirmed this. Pursuant to section 90(c) of the *Residential Tenancy Act* (the "Act"), the Respondent is deemed to have received the evidence 12 days before the hearing. The Applicant did not comply with rule 3.14 of the Rules in relation to the timing of service. I exclude the Applicant's evidence pursuant to rule 3.17 of the Rules because I find it would be unfair to consider it when it was served late and the Respondent takes the position that they did not receive or review it.

Preliminary Issue – Jurisdiction

It was clear from the Respondent's materials that they disputed the jurisdiction of the RTB to decide this matter and the Respondent's agent confirmed this at the hearing. Given this, I heard the parties on whether there is a tenancy agreement covered by the *Act* between them.

The Applicant acknowledged there is a written agreement between the parties in relation to the Applicant leasing farmland from the Respondent. The Applicant acknowledged the written agreement is not related to a residence or living space. The Applicant testified that, at first, they only rented farmland from the Respondent. The Applicant testified that on October 03, 2021, the Applicant told the Respondent they were moving into their trailer on the land and going to live in it and the Respondent agreed to this. The Applicant testified that the agreement between the parties was verbal. The Applicant could not point to or provide any further evidence to support their testimony when asked.

The Respondent's agent testified that the written agreement between the parties was for farmland and the Respondent never agreed to the Applicant living in their trailer on the farmland. The Respondent's agent testified that this has always been a commercial lease.

In reply, the Applicant testified that the Respondent knew the Applicant was living in their trailer because they issued the Applicant a 10 Day Notice.

The Respondent addressed the 10 Day Notice in their written materials which state:

10 day notice was sent in error because when LL spoke to a bylaw officer they advice him to go through residential tenancy branch, but the LL didn't know that it is not a residential matter.

The Respondent's agent confirmed the Respondent issued the 10 Day Notice in error because they did not know the legalities of the matter.

Analysis – Jurisdiction

I told the parties my decision during the hearing. These are the full reasons for my decision.

I find the parties do not have a tenancy agreement covered by the *Act*.

Based on the written agreement between the parties, and the testimony of the parties, I find the Applicant leased farmland from the Respondent for commercial purposes, not to live on. I do not accept that the nature of the agreement changed between the parties as alleged by the Applicant. This is the Applicant's claim, and they have the onus to prove there is a tenancy agreement covered by the *Act* between the parties. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Here, the parties disagree about whether there is a verbal tenancy agreement covered by the *Act* between them. The Applicant has not provided any compelling evidence to support their testimony that there is a verbal tenancy agreement covered by the *Act* between the parties. I would expect there to be some written documentation about a change in the nature of the agreement between the parties if a change in fact occurred.

The Applicant did refer to a 10 Day Notice being issued; however, the Respondent agreeing to the Applicant living on the leased land and the Respondent being aware

that the Applicant was living on the leased land are two different things. If the Respondent became aware the Applicant was living on the leased land and did not agree to this and took steps to stop this, there is no tenancy agreement covered by the *Act* between the parties. The Applicant cannot move onto the leased land without the agreement of the Respondent and then successfully claim there is a tenancy agreement covered by the *Act* between the parties. Further, the Respondent has explained why the 10 Day Notice was issued and I accept their explanation. Issuing a 10 Day Notice did not create a tenancy, nor is it compelling evidence to support the Applicant's position.

Given the above, I find there is no tenancy agreement covered by the *Act* between the parties and therefore the RTB does not have jurisdiction to decide this matter. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 17, 2023

Residential Tenancy Branch