



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPT

Introduction

This hearing dealt with the Applicant's Application filed on February 27, 2023, under the *Residential Tenancy Act* (the "*Act*") to obtain an order of possession of the rental unit or site. The matter was set for a conference call.

The Applicant, the Respondent and the Respondent's sister attended the hearing and were each affirmed to be truthful in their testimony. The Applicant and the Respondent were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

- Is the Applicant entitled to an Order of Possession under section 54 of the *Act*?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Applicant testified that they moved into the rental unit on January 28, 2023, for \$1,300.00 a month in rent, under a verbal tenancy agreement.

The Respondent testified that they run an Airbnb and are not a landlord. The Respondent testified that they run an Airbnb that rents out bedrooms, with the shared use of a kitchen and bathroom, for short-term rentals. The Respondent testified that the Applicant initially paid \$300.00 for an eight-day stay at their Airbnb, that started on January 28, 2023, with a check-out date of February 4, 2022, at 10:00 a.m. The Respondent submitted a copy of the text confirmation of the stay into documentary evidence.

The Respondent submitted that they accepted an additional, \$800.00 from the Applicant, consisting of \$200.00 on February 1, 2023, and \$600.00 on February 4, 2023, to extend the Applicant's stay at their Airbnb until February 28, 2023.

The Applicant testified that they agreed they had paid to stay in the unit until February 28, 2023, but that they tried to negotiate a monthly rate but that the Respondent was offering them a unit that already had someone in it and was asking for too much money of the offered unit. The Applicant submitted 21 pages of text messages and a two-page online advertisement for the rental unit into documentary evidence.

The Respondent testified that the Applicant approached them regarding a monthly rate for the unit. The Respondent testified that the unit the Applicant was staying in had been pre-booked online by another party so they could not let them stay there longer than February 28, 2023, but that they attempted to get the Applicant into another unit at the same price but that they could not come to an agreement.

The Applicant testified that on February 24, 2023, they got into a disagreement with the Respondent's sister, who assisted in managing the property, and that they called the police to assist in keeping the peace but that instead of helping them, the Applicant and their belongings were removed from the residence by local police. The Applicant confirmed that they resided in the unit for 27 days.

The Respondent agreed that there had been a disagreement between their sister and the Applicant, which resulted in the Applicant being removed from the property by local police.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 2 of the Act sets out the limitations on my jurisdiction.

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.

The Act defines a tenancy agreement as the following:

"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 license to occupy a rental unit;

During this hearing, I heard conflicting verbal testimony from the parties as to whether or not their living arrangement constituted a tenancy agreement. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Applicant.

Additionally, section 4 of the Act states the following:

"What this Act does not apply to

4 This Act does not apply to

(e) living accommodation occupied as vacation or travel accommodation,"

The Residential Tenancy Policy Guideline #27. Jurisdiction provided further guidance on Vacation or Travel Accommodation and Hotel Rooms, stating the following:

"b. Vacation or Travel Accommodation and Hotel Rooms

The RTA does not apply to vacation or travel accommodation being used for vacation or travel purposes. However, if the accommodation is rented under a tenancy agreement, the RTA applies. For instance, the RTA would likely apply to a winter chalet rented for a fixed term of 6 months.

Whether a tenancy agreement exists depends on the agreement. Some factors that may determine if there is a tenancy agreement are:

- whether the agreement to rent the accommodation is for a term;
- whether the occupant has exclusive possession of the hotel room;
- whether the hotel room is the primary and permanent residence of the occupant;
- the length of occupancy.”

I accept the testimony of the Respondent supported by the text messages they submitted into documentary evidence that when this arrangement started on January 28, 2022, it was for a short-term rental of eight days, set to end on February 4, 2023, at 10:00 a.m., and that this was extended at an additional cost of \$800.00, to February 28, 2022.

I also accept the agreed-upon testimony of these parties supported by the text messages they both submitted into documentary evidence, that the Applicant and the Responded discussed entering into a longer residence agreement but that those discussions did not resulted in a firm agreement for a particular rental unit, a set monthly rent amount or a term of tenancy.

In order to have a tenancy agreement, there must be the intention of both parties to form a legal relationship of landlord and tenant. Without this intent, there can be no enforceable agreement that would arise under the *Act* from the relationship.

In the case before me, there is no written tenancy agreement, no payment of a security deposit, or any other documentary evidence to show that the intent of these parties had been to form a landlord/tenant relationship.

Specifically, I noted the repeated text messages between the Applicant and the Respondent, where the Respondent states, “it’s a short-term accommodation” and the Applicant mentions several times that they are looking for another place. I also noted that after reviewing all the text messages entered into evidence, that at no point did the Respondent and Applicant agree to a term occupancy, a monthly rent amount, or even a specific unit of occupation.

Finally, the Applicant agreed that they resided in the unit from January 28 to February 24, 2023, a period of only 27 days, which I find to be too short of a time to establish a residential tenancy under the *Act*.

Acknowledge that a tenancy agreement can be oral, however, I find that there is no evidence before me to show that the Respondent and Applicant have entered into an oral tenancy agreement. Additionally, I find that the actions of not paying a security deposit, and not signing a tenancy agreement, re-enforces that neither the Applicant nor the Respondent was acting like they were in a residential tenancy that would fall under the *Act*.

Overall, I find that the Applicant has failed to provide sufficient evidence to show that this was a landlord/tenant relationship that would fall under the jurisdiction of the *Act*.

For these reasons, I find that I must decline to accept jurisdiction over the Applicant's dispute with the Respondent.

Conclusion

For the reasons stated above, I decline jurisdiction to resolve this dispute. I have made no determination on the merits of the Applicants application. Nothing in my decision prevents either party from advancing their claims before a Court of competent 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: March 21, 2023

Residential Tenancy Branch