



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, MNDCT, RR, RP, PSF, OLC, FFT

Introduction

The Applicant filed an Application for Dispute Resolution on February 13, 2023 seeking:

- to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property
- compensation for monetary loss
- reduction in rent for repairs not provided
- provision of services/facilities required by the agreement or law
- the Landlord's compliance with the legislation and/or the tenancy agreement
- reimbursement of the Application filing fee.

The Residential Tenancy Branch scheduled the matter for a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") for June 9, 2023.

The Applicant filed another Application on February 28, 2023 seeking:

- to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property
- repairs made to the unit
- the Landlord's compliance with the legislation and/or the tenancy agreement
- reimbursement of the Application filing fee.

This second Application was linked to the Tenant's first Application already in place.

Both the Applicant and the named Respondents (hereinafter, the "Respondent") attended the hearing. I explained the hearing process at the start of the hearing and provided the opportunity for questions. At the start of the hearing, both parties confirmed that they received the evidence of the other.

Preliminary Matter – jurisdiction

I proceeded with the hearing and heard the Applicant and the Respondent's submissions on the key issue of jurisdiction in this matter.

The Applicant set out that they never had an agreement with the Respondent; the arrangement was all verbal for the last 7 years when the Respondent would transport the Applicant from another province, and made a living space available for the Applicant during a work term. In this present situation, the Applicant stayed at the Respondent's home for one night, and then the Respondent said to the Applicant "stay as long as you like."

According to the Applicant, by the third week of October 2021, they broached the subject of compensation to the Respondent for this accommodation, and they paid an amount of \$400 each month as a contribution to the annual property taxes. They would contribute this money to the upstairs couple living in the rental unit who were the Respondent's parents.

The Respondent confirmed this arrangement for accommodation was in place for several years (though in a different jurisdiction) in line with the seasonal work they offered to the Applicant who was their employee. The Respondent presented this was an "illegal suite" and they never had any intention to rent it out as such. The area is set aside for friends and family who would visit, being a "spare area" in the Respondent's owned property.

The Respondent presented that "[they] were firm that [the Applicant] would need to be out by April 2022". After this, they had no friends or family visiting in 2022 needing to use that space; therefore, there was no urgency for the Applicant to leave the living space, and "no urgency to end [the arrangement]".

The Respondent confirmed that amounts paid by the Applicant were helping to pay for property taxes. The Respondent thought it was a "roommate situation", where their parents in the home pay utilities and property taxes, with the Applicant contributing to the property taxes and/or utilities.

The *Act* s. 1 defines:

"rent" means money paid or agreed to be paid, or value or a right given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit . . .

“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 . . . and includes a license to occupy a rental unit

The *Act* s. 2 clearly sets out that the *Act* applies only to tenancy agreements and rental units. There is a presumption that a tenancy has been created if a tenant pays a fixed amount for rent. Another distinguishing feature of a tenancy agreement is the payment of a security deposit. From weighing the evidence and considering the submissions of both parties, I find the situation is not that of a residential tenancy.

From what the parties described in the hearing, I find as follows:

- there was no agreement on a duration of the living arrangement – it was contingent on an employment situation
- the Applicant did not have exclusive possession of the basement living space
- there was no amount of rent agreed upon between the parties
- there was no payment of a security deposit that would normally be part of the consideration in a landlord-tenant contract
- the parties had a personal relationship, and occupancy was given by the Respondent because of generosity, instead of a landlord-tenant relationship.

I find the parties had no intention to enter into a legal relationship, *i.e.*, no landlord-tenant relationship. I find it was the Applicant who offered some amount of money in exchange for the accommodation, and this was not agreed to, or planned, in advance. It was a more irregular or tentative way to reimburse the Respondent for the accommodation. As well, the Respondent stated directly in the hearing that this was not a rental unit, and never intended to be. They described it as more of a “roommate situation”.

Also, I find there was no right of exclusive accommodation. This was a space made available by the Respondent for friends or family for the purpose of visits or short-term stays. The Applicant’s stay simply turned out to be longer than anticipated, again with no fixed term or month-to-month agreement.

In this matter, the onus was on the Applicant to prove that a tenancy exists. Through hearing both parties’ understanding of the matter, I find a tenancy, as defined in s. 1 of the *Act*, did not exist in this situation.

Based on these facts and an application of the legislation, I decline to decide the matter due to lack of jurisdiction.

Conclusion

I decline jurisdiction in this matter. The *Act* does not apply in this case.

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

Dated: June 12, 2023

Residential Tenancy Branch