



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNRT, MNDCT, DRI, RR, RP, PSF, LRE, OLC, FFT

Introduction

This hearing dealt with an application by the applicant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to sections 33 and 67;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order regarding the tenant’s dispute of a rent increase by the landlord pursuant to section 41;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65
- an order for the landlord to make repairs to the rental unit pursuant to sections 32 and 62;
- an order for the landlord to provide services or facilities required by law pursuant to section 27 and 65 (f);
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70(1)
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

EW, the applicant, and TC, the applicant’s assistant appeared at the hearing. BB, the respondent appeared at the hearing.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

At the outset of the hearing, the respondent indicated that their name is spelled incorrectly on the applicant's application. In accordance with section 64(3)(a) of the Act, I have amended the spelling of the respondent's name on the applicant's application.

Issue(s) to be Decided

Does the Act apply to this dispute, and do I have jurisdiction to decide this dispute? If so, is the applicant entitled to their claims?

Background and Evidence

As the parties were advised, it became apparent at the hearing that I must determine whether a residential tenancy agreement exists between the parties such that I have jurisdiction to proceed with the applicant's claims. As a result, the parties were given the opportunity to provide testimony regarding jurisdiction.

The respondent testified that the parties do not have a residential tenancy agreement because the applicant never resided on their property. Rather the respondent testified that they had a lease with the applicant for the use of their land for the purpose of storage and keeping their horses. The respondent testified that it was a land lease for agricultural purposes. The respondent testified that the garage was rented to the applicant to use for storage. The respondent testified that the garage is not effectively a garage but rather is a structure with three walls and an open area where the fourth wall would be to allow the horses to roam in and out. The respondent testified that there is no kitchen, bathroom, water source, or living space in the garage which was rented to the respondents. The respondent testified that the applicant never lived there.

In response to the respondent's testimony, the applicant testified that they rented the garage as part of the facility and there was a spot in the garage for storage. The applicant testified that they did not live in the garage, but they stayed there during foaling season which lasted two to three months. The applicant confirmed that there was no kitchen or bathroom in the garage and that they had access to the main house

for that. The applicant testified that they have a separate residence in Abbotsford. The applicant testified that during foaling season they paid the respondent extra for hydro and wifi.

Analysis

Where there is a question of jurisdiction, the applicant bears the burden to prove the Act applies. I have considered the testimony of the parties and for the reasons set out below, I find that the applicant has not met the burden which is upon them to prove that the Act applies to this dispute.

Section 1 of the Act provides the definition of a rental unit and tenancy agreement. A "rental unit" is defined as **living accommodation** rented or intended to be rented to a tenant. A tenancy agreement is defined 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 **[my emphasis added]**.

I find that the garage and surrounding property that the applicants used for the storage of equipment and horses was not rented to them as living accommodation and therefore does not meet the definition of a rental unit. As a result, the agreement between the parties does not meet the definition of tenancy agreement which requires that the agreement between the parties be with respect to the possession of a rental unit.

Based on the foregoing, I find that no residential tenancy agreement exists between the parties, and, on that basis, I decline to accept jurisdiction to resolve this dispute.

Conclusion

I find that the Act does not apply to this dispute, and I have declined jurisdiction to consider the application.

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: June 19, 2023

Residential Tenancy Branch