



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes (CNL), CNE, CNC, MNDC, OLC, FF, O

Introduction

This decision deals with two applications for dispute resolution, both brought by the same applicant. At the outset of the hearing the applicant withdrew her original application. In the second application the applicant seeks to cancel the notice to end tenancy for end of employment with the landlords and to cancel the notice to end tenancy for cause. The applicant also requests a monetary order for money owed in compensation for damage or loss under the act, to recover her filing fee and other issues.

The applicant served the respondents in person on November 12, 2009 with a copy of the application and a Notice of the Hearing. I find the respondents only received the applicants' second application the day before the hearing but they have requested that the hearing continues as they have provided evidence for the first application that is relevant to this application.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues to be decided

Is there a tenancy agreement in place if so; has the tenant provided sufficient evidence that either Notice to End Tenancy can be cancelled and is the tenant entitled to compensation for damage or loss under the *Act* and to recover her filing fee for this application?

Background and Evidence

The applicant moved into the basement suite on November 28, 2008. The applicant states that this is her daughters and son-in-laws home and they asked her to come and stay in the suite to spend time with her grandchildren. She states that this was a family arrangement. The applicant states that she contributed to the household by purchasing food, cooking and cleaning for the family. She also cared for her grandchildren. The applicant claims that there was never a tenancy agreement in place or an employment agreement she was just a grandmother caring for her grandchildren and helping out around the house. The applicant claims she paid for landscaping in the garden and purchased a playhouse for her grandchildren.

The respondents claim that there was a verbal tenancy agreement in place with the applicant. They claim the rent for this suite was \$800.00 and they reduced this rent to \$600.00 with the remainder used to pay the applicant for childcare costs. The respondents claim that from February, 2009 they agreed the applicant could use the \$600.00 each month to pay for food for the family but it was still considered to be rent money. The respondents claim that due to the applicants' alcohol problems and the danger this put their family in they decided to end her employment caring for the children and on September 30, 2009 served her with a two month notice to end tenancy

because her employment with the landlord had ended and a one month notice to end tenancy for cause was served on October 26, 2009.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Based on the inconsistency between the applicants' evidence and the evidence of the respondents and due to the fact that there is no written tenancy agreement I can not conclude that there is a tenancy agreement in place. In the absence of a written tenancy agreement, the burden of proving that an agreement exists lies with the person making the claim however in this case it is just the respondents word against that of the applicant and when it is just one persons word against that of the other that burden of proof is not met. Also the fact that the applicant has been buying food for the family and not making rent payments reinforces her claim that no tenancy exists and that this is a family arrangement. Therefore, I decline jurisdiction in this matter.

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 13, 2009.

Dispute Resolution Officer