



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, OPT*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for an order of possession and for monetary order for the loss of her personal belongings. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to an order of possession and a monetary order?

Background and Evidence

At the start of tenancy in February 2012, the rental unit consisted of a room in a home that is occupied by the landlord who is also the owner of the home. The landlord shared a kitchen with the tenant.

The tenant testified that on August 01, 2014, with the permission of the landlord, she moved into a self contained suite in the basement of the home. The landlord denied having provided the tenant with permission to move to the basement.

The landlord's son RB who testified at the hearing stated that his father is elderly and was a victim of credit and debit card fraud and elderly abuse, at the hands of the tenant. The landlord had contacted the Residential Tenancy Branch and was informed that the living arrangements do not fall under the jurisdiction of the *Residential Tenancy Act*. Therefore the landlord reported the matter to the Police who visited the home on August 28, 2014 and asked the tenant to leave the premises. The tenant was given up to September 07 to move out and remove all her belongings. On September 08, the police visited the home and found that the tenant was still living in the home. The police forced the tenant out that day.

The tenant was ordered to return the next day with a truck to remove her belongings. An appointment was set up. The tenant showed up late for the appointment and had made no arrangements to remove her belongings.

The landlord made arrangements for the tenant's belongings to be removed and this was done on September 11, 2014. The tenant stated that she was wrongfully evicted and is claiming \$5,000.00 towards the loss of some of her belongings.

Analysis

The tenant argued that she lived in the basement in a self contained suite with the landlord's permission. The landlord denied this.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the tenant did not provide sufficient evidence to support her case that she lived in a self contained suite, in the basement of the home. Having heard the testimony of both parties, I prefer the testimony of the landlord. I find on a balance of probabilities that it is more likely than not that the tenant lived upstairs and had no permission to occupy a self contained suite in the basement.

Based on the above facts I find that the tenant rented a room in the home of the owner/landlord and shared the kitchen with the owner/landlord. Section 4 of the *Residential Tenancy Act*, addresses what the *Act* does not apply to. It states that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation

Conclusion

The circumstances of the dispute do not fall within the jurisdiction of the *Act*, and the application must therefore be dismissed. The tenant is at liberty to pursue other remedies under common law.

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: September 19, 2014

Residential Tenancy Branch

