



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, FFT

Introduction

On November 30, 2022, the Applicant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) asking that the landlord comply with the Act, Regulation, or Tenancy Agreement and to suspend or set conditions on the landlords right to enter the rental unit.

The matter was set for a conference call hearing. The Applicant and Respondents appeared at the hearing. The Respondents were assisted by a lawyer and an agent. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to 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.

Issues to be Decided

- Does the living arrangement fall within the jurisdiction of the Act?

Background and Evidence

The Applicant testified that the tenancy began on in 2018 on a month-to-month basis. The Respondent Mr. K.T. is her father. She stated that rent in the amount of \$400.00 is to be paid to the landlord by the first day of each month. The Applicant did not pay a security deposit. There is no written tenancy agreement.

The Respondents' lawyer confirmed that the applicant moved into the unit in 2018; however, this is not a tenancy arrangement that falls under the Act. When the Landlords purchased the property in 2013 they were aware of the strata bylaw that does not permit renting the unit. An exemption to the strata bylaw permitted the Landlord to allowed children of the owner to stay in the unit. The Respondent allowed his daughter to occupy the unit. The Respondent retains one of the bedrooms for their use and stated that they have regularly attended and entered the unit a couple time per week to retrieve their mail which is delivered to the unit.

The Applicant testified that she made two \$400.00 rent payments to the Respondent in 2018, and then started paying her father \$400.00 in cash each month. The Applicant stated that she did not get a receipt for the cash payment because she did not see the need. The Applicant provided two e-transfer documents showing two \$400.00 payments made in 2018. The Applicant confirmed that she does not pay utilities. She confirmed that her father retains a bedroom in the unit for his use and he receives mail at the unit. She stated that the rent was based on family considerations.

The Respondent, Mr. K.T. testified that his daughter does not pay monthly rent and does not pay for monthly utility costs. The Respondent did not prepare a written tenancy agreement because this is not a tenancy. The Respondent testified that the two \$400.00 payments they received were for the cost of repairing a garage door. He testified that his daughter is lying, and they never received any rent money from her.

The Applicant provided testimony that her father has regularly entered the unit without notice ever since she moved into the unit in 2018. When the Applicant was asked why she suddenly is not satisfied with that arrangement, she stated that recently she wants more privacy and she wants the Respondent to provide written notice before they enter.

The Respondent's lawyer submitted that the Respondent did not issue receipts for cash rent payments because rent was not due and cash payments were never received from the Applicant.

The Respondents agent Mr. J.U. confirmed that there was damage to a garage door, and he also stated that comparable two-bedroom units would rent for approximately \$1,600.00 per month.

The Respondents lawyer submitted that the access issue only started when the strata noticed that the Applicant permitted unauthorized persons to reside in the unit.

The Applicant denied that she has permitted another person to move into the unit.

The Landlord's lawyer submits that this living arrangement between the Applicant and Respondent is not a tenancy under the Act.

The Applicant submitted that she is a Tenant under the Act.

Analysis

The Residential Tenancy Branch Policy Guideline #9 Tenancy Agreements and Licences to Occupy provides the following information:

TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- *the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and*
- *the tenant pays a fixed amount for rent.*

LICENCES TO OCCUPY

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time.

Other factors that may distinguish a tenancy agreement from a licence to occupy include: • payment of a security deposit; • the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations. An arbitrator will weigh all the factors for and against finding that a tenancy exists.

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

I find that the living arrangement between the Applicant and Respondent is not a tenancy that falls under the Act for the following reasons.

I find that the Applicant does not have exclusive possession of the unit. The Applicant acknowledged that her parent would regularly attend the unit and enter without notice;

he retains use of one of the bedrooms and has his mail delivered there. I find that this arrangement is not exclusive possession for the Applicant.

I find that the Applicant did not pay a security deposit, does not pay utility costs, and she has provided insufficient evidence to prove that she has paid \$400.00 in cash to her father each month for rent. While the Tenant provided two e-transfer records of \$400.00 in 2018, there is no other evidence provided, such a bank record showing a regular withdrawal of cash each month for the past 4 years.

Even if I had accepted that the Applicant was paying \$400.00 rent to her father each month, this would not persuade me to find jurisdiction. I find it reasonable to accept that the rent for a two bedroom unit would be approximately \$1,600.00 per month. I find that the Applicant was permitted to occupy the unit without need of a deposit or a requirement to pay utility costs, because of the family relationship and generosity rather than business considerations.

I find that the Applicant was given permission to use the unit, but that permission may be revoked at any time. I find this arrangement to be a licence to occupy arrangement.

I find that the Act does not apply to the living arrangement and therefore I have no jurisdiction to hear the application to suspend or restrict the Respondents access into the unit. The Application for Dispute Resolution is dismissed without leave to reapply.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Applicant was not successful with her application, the Applicants request to recover the filing fee is denied.

Conclusion

I find that the Act does not apply to the living arrangement and therefore I have no jurisdiction to hear the dispute. The Application for Dispute Resolution is dismissed without leave to reapply.

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: January 24, 2023