

Residential Tenancies Tribunal

Application 2024-0500-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 11-July-2024 at 1:50 pm.
2. The applicant, [REDACTED], attended via teleconference.
3. The respondent, [REDACTED], also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged they “probably” received notice of this hearing more than ten days before the hearing date. In any case, they waived their right to notice in preference of a speedy resolution.
5. A second person was initially named as a respondent. Parties agreed at the time of the hearing to have him removed as a part.
6. The respondent argued that there was no residential tenancy relationship. She says no agreement was signed nor was rent ever paid. She testified that she simply allowed the applicant, her brother, to reside with her for a time. The applicant disagrees. He testified that there was a verbal agreement setting rent at \$500 a month.
7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Act*. The application of the *Act* is defined by section 3, which reads as follows:
 3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.
 - (2) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies to residential premises, residential complexes and rental agreements, whether made before or after this Act comes into force.
 - (3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant
 - (a) uses or occupies residential premises and

(i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;

(b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or

(c) has used or occupied residential premises and

(i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

...

8. As per s. 3(b), above, the existence of a landlord and tenant relationship turns on whether or not the applicant paid or agreed to pay rent. The applicant testified under solemn affirmation that he did pay rent. The respondent testified under solemn affirmation that he did not pay rent.

9. The applicant's testimony was vague, evasive, and hesitant. He testified he moved in around a year ago and there was a verbal agreement that he would pay \$500 a month. I asked him when rent was due. He said each month. I asked him if it was due on the first of the month, the last of the month, the 15th, etc. He said he was "pretty sure" it was the last of the month. He said he paid in cash. He was unable to offer any documentary evidence in the form of bank records, receipts, etc. He could not recall when he was evicted.

10. The respondent's testimony was candid, frank, and fair. She was forthright and responsive to questions. She did not hesitate to admit when she didn't remember a detail. She testified that she allowed the applicant to stay with her while he was going through a difficult time. She said there was no mention of rent until after he was no longer residing at the premises.

11. Considering the evidence in its totality, I accept on a balance of probabilities the respondent's testimony that there was never rent paid or an agreement to pay rent. In the absence of rent or an agreement to pay rent, there is no landlord and tenant relationship in respect of residential premises under s. 3(3) of the Act. As there was no landlord and tenant relationship in respect of residential premises, this tribunal has no jurisdiction. The application is dismissed.

6-August-2024

Date


Seren Cahill
Residential Tenancies Office