

Residential Tenancies Tribunal

[REDACTED] Decision 19-0039-01

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:15 p.m. on September 19, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, did not attend the hearing but they were represented by their legal counsel, [REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. He was represented by his legal counsel, [REDACTED].

Preliminary Matters

4. The tenant, the legal counsel for both the landlords and the tenant attended the hearing by conference call.

Issues before the Tribunal

5. The landlords are seeking the following:
 - a. Vacant possession of the unit;
 - b. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.

Issue 1: Is it a landlord tenant relationship

Landlord Position

7. The representative stated that landlords built a granny flat for the tenant and his now deceased wife to live in the unit. They moved into the unit in May 2003. The tenants were responsible for their own utilities and there was an agreement in place between the landlords and tenants. The agreement was that the 2 tenants were the only ones allowed to live in the unit and if either of the tenants passed away and the other tenant found a new partner they would have to move out. About 8 or 9 years ago the tenant started paying \$50.00 per month for the water tax. The tenant's wife passed away in 2012.
8. The representative stated that the landlords received \$15,000.00 as a gift from the tenant and his now deceased wife after the granny flat was built. The intention at the time the granny flat was built was to help the tenants (parents of landlord1) out of a financial jam. He further stated the \$15,000.00 had a broader meaning than just contributing to the building. It was largely a return gesture to get the tenant and his now deceased wife out of a financial situation as the tenant and his now deceased wife could not stay in their home as the tenant's income was being reduced.
9. The representative submitted into evidence a sworn affidavit from [REDACTED] and a sworn affidavit from [REDACTED] (LL #3). The sworn affidavits contained appendixes.

Tenant Position

10. The representative for the tenant argued that a landlord tenant relationship does not exist. The terms the landlords said that were in the agreement are not normally in a lease agreement. The representative stated the tenant and his now deceased wife contributed between \$25,000.00 and \$30,000.00 towards the construction of the granny flat. They sold their home for \$60,000.00. They had a mortgage of \$17,000.00. There was \$43,000.00 left and they put the bulk of the money into the building of the granny flat for them to live there forever more. When the tenant and his now deceased wife gave the money to the landlords they did not get the legal advice on how to protect themselves. The intent of everybody at the time the tenant and his now deceased wife were moving in was that the tenants could remain in the granny flat for the remainder of their lives. They paid the utilities for the unit. After the tenant's wife died, the tenant paid \$50.00 a month to the landlords towards the water taxes.

11. The representative stated that in both of the landlords' sworn affidavits they acknowledge \$15,000.00 was given to them towards the home. The landlords benefited from the money because the money was put towards the construction of the unit as it added value to the premises. The tenant and his now deceased wife also benefited from it. They had a place to live. The tenant's perspective was that they had a life estate. He indicated that he was entitled and he believed he was entitled to live in that premises as long as he chose. The representative further stated the landlords are adding terms to suit their goal to remove their father from the unit because there have been some issues that have arisen with respect to the tenant's grandchildren. According to landlord2's affidavit they originally were going to put a basement apartment in the unit so that the tenant and his now deceased wife could rent the unit. Yet in this arrangement, there was no rent.
12. The tenant testified that they gave between \$25,000.00 and \$30,000.00 to help construct the granny flat. His wife handled the money. She would give the landlords money and they would go out and pick up material. He also testified that his daughter and his grandchildren have stayed at the unit but they have not lived there.

Analysis

13. I have reviewed the testimony and evidence of the landlords and the tenant. I have determined that there is one issue that needs to be addressed; (i) is it a landlord tenant relationship. Section 2(h) of the Act states "*rental agreement*" means a written, oral, or implied agreement between a landlord and tenant in which the tenant is granted the right to use or occupy a residential premises on the condition rent is paid. The tenant did not pay rent. As they didn't pay rent it does not meet the definition of a rental agreement.

I also find that the tenant's testimony was credible in that when they (himself and his now deceased wife) sold their home, they gave money to the landlords towards the construction of the granny flat. The tenant and his now deceased wife made an investment into the unit as they gave money towards the construction of the granny flat. They had an equity interest in the unit. It is not uncommon for parents to sell their home and give some of the proceeds from the sale of their home to their son/daughter towards the building/buying of a home that the parents are also going to live in. As the tenant had an equity interest in the unit, this matter falls outside the jurisdiction of the Residential Tenancies Act. Therefore, it is not a landlord tenant relationship.

Decision

14. The matter is not a landlord tenant relationship. It falls outside the jurisdiction of the Residential Tenancies Act.

Issue 2: Hearing Expenses - \$20.00

15. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Landlord Position

16. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

17. As it was determined in no. 18 above, there is no landlord tenant relationship. Therefore, the claim for hearing expenses fails.

Decision

18. The claim for hearing expenses fails.

Summary of Decision

19. This matter falls outside the jurisdiction of the Residential Tenancies Act as there is no landlord tenant relationship.

October 23, 2019

Date

Residential Tenancies Section