

DECISION

Dispute Codes CNC, CNR, OLC, FF

Introduction

There was an application for orders cancelling a Notice to End Tenancy for cause and a Notice to End Tenancy for unpaid rent. The applicants also requested an order that the landlord comply with the *Residential Tenancy Act* and *Regulation*. The hearing was conducted by conference call. The applicants and the respondent participated in the hearing.

Background and Evidence

The respondent is the registered owner of the rental property containing four rental units. The female applicant WP is his mother; the applicant JW is the husband of WP. The respondent purchased the property in 2005. His mother acted as property manager and occupied one of the units. According to the respondent she moved out of the rental property in August, 2009, but she continued to act as property manager. One of her duties was to collect rents and make a monthly payment to the respondent. The respondent testified that in January, 2010 WP refused to pay over the sum of \$1,300.00 from rent monies she collected. The respondent testified that on or about January 14, 2010 the respondent notified his tenants that he was taking over management of the property. When the respondent attended at the rental property on January 14, 2010 he discovered that the rental unit that had been vacant the previous day was now occupied by the applicants. The respondent then gave WP a letter terminating her employment and gave her a notice to vacate the rental unit. The notice was in the form of a letter dated January 15, 2010. The letter was addressed to the applicants; the respondent stated that the applicants were illegally occupying the rental unit, that he had not entered into a tenancy agreement with them and had not received any rental monies from either of them. The respondent gave them 48 hours to vacate the property. It is this notice letter that the applicants have applied to cancel.

In her written submission the applicant WP claimed that: "I, (WP) am NOT a tenant, I am Acting Owner." She produced a copy tenancy agreement as part of her evidence. The agreement purported to be made between WP as landlord and her husband JW as tenant. It provided that the tenancy at the rental property commenced on November 1, ,2009 for a one year term with rent in the amount of \$550.00 payable on the 31st of each month. At the hearing WP testified that her husband has pre-paid the rent for the rental unit up to October 30, 2010. She testified that her husband paid the rent to her. She did not provide any proof of payment and she has not remitted any money to the respondent.

The applicants claimed that they have put a large amount of money and labour into the rental property. They claim to have an ownership interest in the property. WP also referred to a legal action in the Supreme Court of B.C. concerning the purchase and sale of the rental property. The lawsuit is against the realtors and vendors of the property. The applicant did not say how she was involved with the legal action.

Analysis and conclusion

Although the applicants have applied to cancel Notices to End Tenancy and have requested an order that the respondent comply with the *Residential Tenancy Act*, they also assert the inconsistent position that they are not tenants and not governed by the *Act*. The applicants said that they have commenced a civil action against the respondent in Small Claims Court concerning the residential property.

WP asserted on the basis of a tenancy agreement whose authenticity is questionable, that she is landlord of the rental unit and has received prepaid rent from her husband as tenant, yet she has now applied for relief as a tenant, together with her husband. On the evidence presented to me I find, on a balance of probabilities that there is no tenancy or tenancy agreement as defined by the *Residential Tenancy Act* between the

applicants and the respondent and consequently I have no jurisdiction over the dispute between the parties. The application is therefore dismissed without leave to reapply.

Dated: March 30, 2010.
