



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes O

Introduction

This hearing dealt with an application by the applicant seeking to have a 10 day Notice to End Tenancy Due to Unpaid Rent cancelled. The applicant submits that the respondent had no jurisdiction under the *Residential Tenancy Act* to serve the notice to end tenancy.

Issue(s) to be Decided

Is there jurisdiction under the *Residential Tenancy Act* to resolve the dispute between the applicant and respondent?

Background and Evidence

Counsel for the applicant submits that there is no jurisdiction under the *Act* to resolve this dispute under the *Residential Tenancy Act*. The applicant and her common law partner have lived in the premises for a number of years and there is an interest in the property held in trust. Counsel stated that the applicant has put significant amount of money into renovating the property and there is an interest in the property which goes beyond what is transferred through a tenancy agreement.

The respondent provided copies of letters sent to the common law partner of the applicant, who was not named in this application. The letters are dated August 4, 2006 and August 24, 2009. A third letter was sent to the applicant on October 28, 2010.

In summary, the letters discuss the following:

- That the applicant and her common law partner have occupied the premises since March 2002;
- That the respondents understanding of the agreement was the son would make the mortgage payments, maintain the property, pay the property

taxes and cover other costs in exchange for the use and occupation of the property;

- Allegedly, the common law partner of the applicant had defaulted on these payments and as a result the respondent was considering selling the property;
- The 2009 letter reiterated the same circumstances in addition to suggesting that the respondent “*has in the past considered gifting a portion of the property to you*”.

In the letter of October 28, 2010, addressed to the applicant, the respondent alleges that the property had been rented to the applicant and the common law partner all these years and that, specifically, the applicant has been living at the premises for free. In this letter the respondent alleges that the applicant is an over holding tenant in breach of the *Residential Tenancy Act*.

The respondent’s agent argued that this was a tenancy and the tenant was failing to pay rent. The agent confirmed that the common law spouse is the son of the respondent. According to the respondent that applicant was not responsible for a mortgage payment but for the monthly rent of \$1,000.00. At one point the respondent alleged that there is over \$100,000.00 in outstanding rent and then alleged it was \$42,000.00. The respondent stated that she made all the payments and paid for all the costs of any renovations.

The respondent acknowledged that no action has previously been taken to address this dispute because it involves family.

Analysis

The Residential Tenancy Act provides that the Act applies to tenancy agreements, rental units and other residential property. The definition of tenancy agreement in the Residential Tenancy Act provides that the Act applies to a license to occupy. Section 4 of the Act contains a list of accommodation and agreements to which the Act does not apply. A Dispute Resolution Officer will decline jurisdiction, and refuse to hear the dispute, if the accommodation or agreement is listed in section 4.

I find that I do not have jurisdiction pursuant to section 4 of the *Act* to make finding respecting the relationship between the applicant and respondent. First of all, I find that there is no direct agreement between the parties named in the application for Dispute Resolution. The relationships, and any contractual obligations, are between the respondent and her son who was not named as a part in this dispute. I am persuaded

by the correspondence provided by the respondent that this is a family dispute and there is the possibility that the respondent's son has an interest in the property. Therefore, the applicant who is the common law partner of the respondent's son may also have a legal interest in the property.

I find that there is a possibility of an interest in the land or that a transfer of ownership has been implied or contemplated by the parties and therefore this dispute falls outside of the jurisdiction of the *Residential Tenancy Act*. The parties will need to seek resolution of this dispute through another jurisdiction.

Conclusion

I find that the relationship between the parties is not within the jurisdiction of the *Residential Tenancy Act* and therefore have declined to consider the merits of the application. I also find that the respondent cannot bring forward a notice to end tenancy under this *Act*.

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: December 13, 2010.

Dispute Resolution Officer