

## **DECISION**

Dispute Codes      OPL, MNDC, FF

### **Introduction**

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover her filing fee for this application from the respondents pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The female respondent (the respondent) confirmed that the applicant, her daughter, handed the respondents the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on June 29, 2011. The respondent also confirmed that the respondents received a copy of the applicant's dispute resolution hearing package sent by the applicant by registered mail on September 1, 2011. I am satisfied that the applicant served these documents to the respondents in accordance with the *Act*.

### **Preliminary Matters**

At the commencement of this hearing, the respondent's counsel asserted that this application was not properly before me as he and the respondents claim that the applicant cannot act as the landlord because she is not the beneficial owner of this property. He explained that the female respondent owned the property for many years and has lived in the main floor residential unit with the male respondent since 1992. Although the respondent's counsel and the female respondent confirmed that title to the property was transferred from the respondent to her daughter (the applicant) "for mortgage purposes" requiring the necessary changes at the Land Title Office, the respondent's counsel claimed that the respondent is still the beneficial owner of the property. The respondent testified that her son had taken a mortgage out on the property prior to 2004, but when her son failed to meet his mortgage obligations, her daughter, the applicant, provided funds to meet these obligations and avoid foreclosure of the property.

The applicant testified that she paid \$77,000 in 2004 or 2005 to ensure that the property would not be foreclosed and at that time the property was transferred to her name in the Land Title Office.

The respondent's counsel noted that there has been a lengthy family disagreement between the parties regarding the ownership of this property. He said that both parties have retained lawyers in the past to attempt to resolve this disagreement. However, he acknowledged that there is no ongoing litigation regarding this matter. He maintained that this dispute does not properly fall under the *Residential Tenancy Act*, as a determination needs to be made regarding who is the beneficial owner of this property. He observed that this matter could only be resolved by the Supreme Court of British Columbia if the parties cannot agree on who is the beneficial owner of the property.

#### Issues(s) to be Decided

Does this application fall within the jurisdiction of the *Residential Tenancy Act*? If so, has the applicant provided sufficient evidence to demonstrate that she is in fact the landlord for this property and that a landlord/tenant relationship exists between the parties? If so, is the applicant entitled to end this tenancy on the basis of the 2 Month Notice issued to the respondents? If so, is the applicant entitled to an Order of Possession? Is the applicant entitled to a monetary award for loss arising out of this tenancy? Is the applicant entitled to recover the filing fee for this application from the respondents?

#### Background and Evidence

The respondents, both senior citizens, have been living in the ground floor suite of this two level house since at least 1992. The parties agreed that the respondents have been paying all of the utilities for this property for a number of years. The applicant said that she has been paying the mortgage and all other bills for this property and has been responsible for renting to tenants in the basement suite since she purchased the property in July 2004 or July 2005.

The applicant moved into the basement suite of this property in August 2011, anticipating that she would soon be able to move upstairs. She said that she needs the ground floor suite for her work and would like the respondents to move downstairs. She has offered them a tenancy at what she described as a very reasonable rate. She testified that the lower level suite would be better for them as they would only have to deal with two steps instead of multiple steps in their existing ground floor suite. She also expressed concern that the respondents have allowed another individual to live with them in the ground level suite without her authorization or knowledge.

The applicant entered into written evidence a number of letters and a copy of a Residential Tenancy Agreement (the Agreement) that she had drafted to enable the respondents to enter into a formal tenancy to occupy the basement premises in this property. The applicant signed and initialled this Agreement and sent letters to the respondents identifying herself as the landlord and the respondents as the tenants.

However, the respondents have not signed the Agreement. Other than her own letters describing the respondents as her tenants, the applicant has not provided any evidence to confirm that the respondents have accepted that they are in fact tenants in this property.

While both parties presented considerable oral testimony and arguments regarding the ownership status of this property, neither party provided anything in writing to shed light on who actually owns this property, and which of the parties is actually the landlord and which the tenant. If the respondents or their counsel planned to raise objections regarding ownership of this property, it would have been very helpful had one of them submitted written evidence that would assist me in considering their counsel's claim that the applicant was not in fact the beneficial owner of the property. The respondents did not submit any written evidence.

### Analysis

At the hearing, there was some discussion as to the best method of proceeding. Both parties appeared to recognize that they had not provided much if anything that would enable me to find whether the applicant was in fact a landlord under the *Act*. There was also a realization that whatever decision was rendered regarding the current application, the larger dispute remained as to who owns this property. The parties agreed to consider the respondent's counsel's recommendation that they seek the assistance of a mediator within the next 30 days in an attempt to reach a resolution of their concerns without spending more on legal fees.

Separate from whether the parties decide to follow through with what would appear to be a reasonable recommendation to seek mediation, the current application requires a decision.

Based on the oral and written evidence submitted, I find no reason why the application would not fall within the *Residential Tenancy Act*. For that reason, I find that I do have jurisdiction to consider this application.

While I believe that I do have jurisdiction to consider this application for dispute resolution, I am not satisfied that the applicant has demonstrated to the extent necessary that she is in fact the landlord of this property and has authority to act as the landlord in exercising a notice to end this tenancy to the respondents. As noted above, neither party provided anything in writing that would either prove or disprove their claims that each of them was the true owner of the property. As the initiator of the application for dispute resolution, the applicant when challenged on whether she is in fact the landlord needs to provide more evidence than her oral testimony that she is in fact the

landlord and has been acting in that role for a number of years. The applicant admitted that the respondents have not been paying rent and have been paying all of the utilities for this property for many years. Both of these admissions and the respondents' refusal to sign the applicant's proposed Agreement call into question the applicant's claim that it is clear that she is the landlord.

Although the applicant claimed that the parties had an oral landlord/tenancy agreement, the respondents disputed this. The respondent claimed that she has always been the beneficial owner of this property, despite changes she agreed to in 2004 or 2005 to assist her daughter to achieve a credit rating.

Under these circumstances and the very limited written evidence presented by the parties regarding the ownership question, I find that there is insufficient evidence before me to find that the applicant is in fact able to issue a notice to end tenancy as a landlord to the respondents as her tenants. For this reason, I dismiss this application.

In making this finding, I would strongly encourage the parties to consider enlisting the services of a mediator to attempt to resolve the issues in dispute surrounding who owns this property and who can act as landlord for the purposes of the *Residential Tenancy Act*. In this case, an arbitrated decision by a Dispute Resolution Officer of the Residential Tenancy Branch is unlikely to establish closure regarding issues in contention that clearly extend far beyond the jurisdiction of the *Residential Tenancy Act*. Mediated settlements provide parties an opportunity to resolve all matters in dispute in a way that attends to their respective needs and obligations.

If the parties do need to return to the Residential Tenancy Branch for dispute resolution with regard to a matter that falls under the *Act*, it would be most helpful if they were to make written submissions to establish their claims to ownership of this rental property.

### Conclusion

I dismiss this application for dispute resolution.

Since the applicant has been unsuccessful in this application, she bears responsibility for her filing fee.

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*.