



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNL, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated September 22, 2011 purporting to be effective November 23, 2011.

Despite being served by registered mail sent on DT, 2011, the respondent did not appear.

Preliminary Matter

At the outset of the hearing the applicant "tenant" testified that the Two Month Notice to End Tenancy for Landlord's Use was issued by her estranged husband who is a co-owner of the residence along with the applicant, and therefore is not her landlord. The applicant presented evidence that was submitted consisting of a draft of a separation agreement between the parties, evidently in relation to a matrimonial family law dispute..

Section 6 of the Act states that rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution in respect of the rights, obligations and prohibitions under the Act or terms of a tenancy agreement that: (i) are required or prohibited under the Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

The Act defines "*tenancy*" as a tenant's right to possession of a rental unit under a tenancy agreement. Under the Act "*tenancy agreement*" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. The Act defines "*rental unit*" as living accommodation rented or intended to be rented to a tenant and defines "*landlord*", to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord:

- (i) permits occupation of the rental unit under a tenancy agreement, or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Given the above, I find that the applicant is not a tenant, but possibly has an ownership interest in the property. I further find that there is no tenancy contract between the two parties that could be governed by the Act because of the possible ownership interest.

Accordingly, I find that this relationship is not that of “landlord and tenant” as specified under the Act. Because this contractual relationship and the matters under dispute do not fall under the jurisdiction of the Residential Tenancy Act, I therefore lack any authority to hear nor decide this matter. Accordingly, this application cannot proceed and must be declined due to lack of jurisdiction.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the purported Two Month Notice to End Tenancy for Landlord's Use that was issued by the party who identified himself as a landlord, is not a Notice that can be disputed through a Residential Tenancy Hearing.

I have determined that the matter is not within my delegated authority to hear nor determine.

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: October 18, 2011.

Residential Tenancy Branch