

DECISION

Dispute Codes OLC, O

Introduction

This was an application by the tenants for an order that the landlord comply with the *Residential Tenancy Act*, Regulation or tenancy agreement and for other unspecified relief. The hearing was conducted by conference call. The named tenant, the landlord, her son

Issue(s) to be Decided

Does this matter fall under the *Residential Tenancy Act* and should the landlord be directed to comply with the *Act*?

Background and Evidence

The rental property is a house in Kelowna. The property is owned by the respondent, who is the mother of the male applicant. The respondent inherited the rental property from her mother in 2000. The applicant has lived in the property since 1991, when his grandmother, the former owner moved from the house to an assisted living facility. According to the respondent the applicant was allowed to live in the house without paying rent, but he was expected to pay utilities and perform basic upkeep to the house.

In a letter dated May 27, 2011 the respondent told that applicants that she was finding it financially impossible to keep the house and she intended to sell it in the near future. She requested that the applicants move out as soon as possible. She said that if the applicants did not cooperate the respondent could proceed with a ten day eviction under the Tenancy Act.

In August, 2001 the respondent signed a contract of purchase and sale of the rental property. The sale was to complete on October 1th and the purchasers were to have vacant possession of the property on October 11, 2011. The possession date was later changed to October 6, 2011.

According to counsel for the respondent as stated in his letter dated September 28, 2011:

Fearing that (the applicant) would not move and the sale would be jeopardized, our client attended at the Residential Tenancy Branch in Kelowna and was advised by a representative that because there was no tenancy agreement and no rent had exchanged hands, this was not a matter within the jurisdiction of the Residential Tenancy Branch. Instead our client was advised to apply to the Supreme Court for a Writ of Possession.

The respondent did apply to the Supreme Court, but the Court dismissed the application and told the respondent that it was up to the Residential Tenancy Branch to determine at a formal hearing whether or not it has jurisdiction to deal with the matter before the Supreme Court would intervene.

The tenants submitted their application for dispute resolution on September 16, 2011. They requested that: "Landlord to provide proper tenancy documentation" and: "notice to reflect that property sold".

At the hearing counsel for the respondent argued that this was not a tenancy under the *Residential Tenancy Act* and I had no jurisdiction to hear the tenants' application for dispute resolution. He submitted that the subject property was not a rental unit under the *Act* because no rent was payable by the tenants; he relied upon the definition of "rental unit" under the *Act* which provides that "rental unit": "means living accommodation rented or intended to be rented to a tenant".

Counsel also submitted that the tenancy began more than 20 years ago and, pursuant to section 4(i) the *Residential Tenancy Act* does not apply to: "living accommodation rented under a tenancy agreement that has a term longer than 20 years".

Analysis and Conclusion

The *Residential Tenancy Act* provides that "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 evidence presented established that the applicant was allowed to live in the house without paying rent, but he was expected to pay utilities and perform basic upkeep to the house. I find that this arrangement constitutes a licence to occupy under the *Act*. There is no requirement that rent be payable in order to create a tenancy agreement under the *Act*. I find that there is an

agreement respecting possession of the property and that it amounts to a licence to occupy under the *Residential Tenancy Act*.

There is no merit to the argument that the *Residential Tenancy Act* does not apply because the tenancy has continued for more than 20 years. A tenancy agreement having a term of 20 years is not equivalent to a tenancy that has endured for 20 years.

I find that the *Residential Tenancy Act* does apply to this tenancy and that I have jurisdiction to deal with the application that is before me.

The landlord has given several notices to the tenants, none of which comply with the requirements of the *Residential Tenancy Act*, because they are not in the approved form. It is not necessary for me to direct that the landlord comply with the *Act* or direct that she give a proper form of Notice as requested by the applicants. If the landlord wishes to end the tenancy she will have to serve the tenants with an approved form of Notice to End Tenancy under the *Act* upon proper grounds, or the purchasers of the rental property will have to give their own two month Notice to End Tenancy for landlord's use after the sale has completed, assuming that they intend to live in the property.

I make no order with respect to payment of a filing fee for this application.

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 11, 2011.

Residential Tenancy Branch