



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, FF

Introduction

This hearing was convened by way of conference call in repose to an application for an Order to dispute an additional rent increase; to cancel a Notice to End Tenancy for unpaid rent; and to recover the filing fee from the respondents for the cost of this application.

The applicant and respondents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The applicant (AW) has filed an application under the *Residential Tenancy Act (Act)* as AW states he continues to receive Notices from the respondent under the *Act*. AW submits that the agreement he has does not fall under the jurisdiction of the *Act* as AW is a director and share holder of the company of which the respondent is the corporate landlord. The parties agree that two previous hearings have been heard in March and April 2012 and in each previous hearing the respective Dispute Resolution Officers made a finding that they had no jurisdiction.

The hearing continued to settle the matter of jurisdiction and if jurisdiction is declined then the parties must settle this dispute in a different legal forum. If I find I have jurisdiction then this matter will be settled at the hearing.

Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction in this matter?
- If so, is the tenant entitled to dispute an additional rent increase and is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?

Background and Evidence

The applicant (AW) claims he has lived at the property for a few years and the corporation is a family owned business with himself, his three siblings and their parents. The applicant states that this is a corporate matter and the Residential Tenancy Branch has no jurisdiction because AW is a share holder and director of the company. AW states he was managing the complex in which his unit is situated and received free accommodation in lieu of managerial duties. AW states a tenancy has never been agreed to or established.

AW agrees that his brothers, the other directors, held a meeting with the rest of the family but this meeting was held without notice to the directors and is therefore not a valid meeting and any decisions made in that meeting cannot be upheld. AW states that in order for a meeting of this nature to be convened the directors must all be given thirty days written notice. As no notice was given AW deemed the meeting to be a family lunch meeting.

AW states that at this meeting one director passed a motion to relive AW of all managerial duties and AW must then start to pay rent of \$1,000.00 or vacate the unit

starting on January 01, 2012. AW states that the minutes presented in evidence of this meeting have been altered. AW states he did not agree to pay rent and has continued to provide some managerial duties in the complex as a night time duty manager as shown when AW's father recently called upon AW to attend at a fire in the complex.

AW agrees he has paid \$1,000.00 to the Respondent from December, 2011 to February, 2012 but stopped this payment after advice that in making payments AW could be seen to be paying rent and therefore establishing a tenancy.

The respondent states that they have provided sufficient evidence to show that the applicant has paid rent since September, 2011 to February, 2012. The respondent states the documentary evidence provided clearly shows rent checks from AW and two of these actually state 'Novembers Rent and Februarys rent' on them. The respondent also states that AW was served with a 10 Day Notice to End Tenancy in October, 2011 and AW paid \$1,000.00 rent within the five days allowed on that Notice. The respondent states that in doing so AW has established a tenancy from September, 2011.

The respondent states AW was informed verbally before September, 2011 that he was being relieved of his managerial duties and would be required to start paying rent. The directors meeting held on December 21, 2011 was a formality to formally release AW from his responsibilities and to formally instruct AW that he would be responsible to pay rent from January 01, 2012. The respondent states that their legal representative instructed them that as long as all the directors are present at a meeting and all directors agree to the meeting that they are not required to give 30 days' notice.

Analysis

With regard to the question of Jurisdiction in this matter; I find there is insufficient evidence to show that a tenancy agreement either verbal or written has been agreed between the applicant and respondent. There is a clear indication that there is a corporate relationship between the parties and there is no indication that the applicant

agreed to the motion to force the applicant to become a tenant in the meeting held on December 21, 2011. Neither party has provided any evidence to show that the meeting did or did not comply with corporate requirements or legislation governing corporate meetings to determine if the meeting was properly convened.

The respondent has provided some evidence to show that \$1,000.00 has been paid to the respondent from September, 2011 to February 2012, however, I am not satisfied that these payments alone constitute the establishment of a tenancy due to the complex corporate relationship between the parties and whether or not correct procedures were followed to release the applicant of his duties within that corporation.

I therefore decline jurisdiction in this matter and the parties are at liberty to present an application in a different legal forum.

Conclusion

I decline Jurisdiction to hear this matter.

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: May 23, 2012.

Residential Tenancy Branch