



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The Landlord and the Tenant's agent gave affirmed testimony at the Hearing.

The Landlord testified that she served the Tenant with the Notice of Hearing documents by handing the documents to him at the rental unit on June 19, 2012, with a witness present. The Landlord provided a copy of the witness's statement of service in evidence.

The Landlord testified that she served the Tenant with the Notice to End Tenancy by handing the documents to him at the rental unit on June 2, 2012, with a witness present. The Landlord provided a copy of the witness's statement of service in evidence.

Preliminary Matters

At the outset of the Hearing, the Respondent's agent submitted that the Residential Tenancy Act does not apply. The Respondent's agent testified that the rental property was purchased from proceeds from the sale of a prior matrimonial home and that therefore the Respondent has an interest in the rental property. She submitted that she was just retained by the Respondent yesterday and that she is in the process of filing documents in Supreme Court. The Respondent's agent gave her professional undertaking that the court documents would be filed as soon as possible and in any event by July 19, 2012.

The Applicant stated that the parties divorced in June, 2008 and that the Respondent then moved into the basement suite and paid rent to the Applicant. She stated that she purchased the rental property in 2003, that it was registered in Land Titles under her name only, and that therefore the Respondent did not have any ownership in the rental property.

The Respondent's agent stated that the Respondent's monthly payment was spousal support. She testified that the Applicant was paid \$400.00 a month until March, when

the Applicant asked for \$650.00. The Respondent refused to pay the increase and attempted to continue to pay \$400.00 a month, but the Applicant refused to accept it.

Analysis

The Residential Tenancy Act (the “Act”) derives its authority under provincial legislation which governs residential tenancy agreements within British Columbia. The Act defines “tenancy” as, “a tenant’s right to possession of a rental unit under a tenancy agreement”. “Tenancy agreement” is defined as, “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”. In this case, the Respondent submits that he has an interest in the property that is greater than a licence to occupy the rental unit under a tenancy agreement. He also submits that money that was paid monthly to the Applicant was not rent, but was for spousal support.

It would appear that the Respondent may have more of an interest in the rental unit than that of a licence to occupy and that therefore the relationship between the parties may not be that of a landlord/tenant. The Respondent is filing Supreme Court documents to determine various matrimonial issues and I decline jurisdiction to hear this matter. If the Supreme Court finds that the Residential Tenancy Act does apply, the Applicant may file another Application for Dispute Resolution.

Conclusion

I decline to accept jurisdiction with respect to 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: July 10, 2012.

Residential Tenancy Branch