

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with an Application for an order of possession based on a 10 day Notice to End Tenancy for unpaid rent.

Both parties appeared at the hearings. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

This hearing began on December 13, 2012, and was adjourned to today in order for it to continue. At the time of adjourning the first hearing there was some discussion about the options that the Respondent might have in this situation. Nevertheless, no decision or order was pronounced until the hearing concluded today, February 5, 2013.

Issue(s) to be Decided

Is there jurisdiction under the *Residential Tenancy Act* (the "Act") to deal with this dispute?

Background and Evidence

The Applicant testified that he served the Respondent on October 22, 2012 with a 10 day Notice to End Tenancy for unpaid rent, and a one month Notice to End Tenancy for cause. The Applicant alleges he has not received rent for November or December of 2012.

The Applicant alleged the cause for the one month Notice was that the Respondent was breaching strata bylaws and has ignored a request to sign a Form K for the strata corporation.

The Applicant has demanded an order of possession but has not requested a monetary order for unpaid rent.

In reply to the Applicant, the Respondent's Advocate explained that the Applicant is abusing the process of the Act, and alleges this is not a tenancy relationship.

The Advocate for the Respondent explained that the Respondent is the ex-wife of the Applicant and lives in the subject condominium with the two children of the marriage.

The Advocate called a witness, who was the lawyer who represented the Respondent in the divorce proceedings between the Applicant and Respondent.

The witness testified that the only matter left to be resolved between the parties is the chief family asset, the subject condominium. She testified that this is family property and there is a dispute over the property, which is the only outstanding issue not resolved in the Courts. She also testified that the Applicant is the sole person on title for the condominium and there is no formal certificate of pending litigation.

The witness testified that she had been under a limited retainer with respect to property issues and there had been no ruling with respect to this family asset.

The Applicant replied that he had discussed this matter with experts in law and asserted that since he was divorced two years ago, the Respondent is, "... nothing to him", which I took to refer to the legal status between the parties. The Applicant had not provided any documentary evidence from these experts.

The Applicant agreed there was no tenancy agreement between himself and the Respondent. The Applicant further testified that he and the Respondent had never discussed the amount of rent to be paid.

The Applicant had to be cautioned for inappropriate behaviour at the first hearing. It is clear the Applicant is frustrated because the Strata Corporation, where the subject condominium is located, has filed a Petition in the Supreme Court of British Columbia against him for his share of special levies and common expenses. A copy of the Petition was in evidence before me.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities I **find that the Act does not apply to this relationship and I decline jurisdiction.**

I find that the parties never entered into a tenancy relationship. There was no meeting of the minds as to the formation of a rental contract nor was there sufficient evidence to find an implied tenancy.

The Respondent has lived in the condominium with the children of the marriage since the parties were married. There is no evidence the parties ever intended this to be a tenancy. They had never discussed rent, possession of the subject property, use of the common areas, or services or facilities, or entering into a tenancy agreement. The fact

the Applicant sent the Respondent a tenancy agreement and a Form K, both of which the Respondent refused to sign, or had used forms intended to end a tenancy, does not create a tenancy relationship.

As set out in Policy Guideline 27 to the Act,

“The Legislation does not confer upon the R.T.B. [Residential Tenancy Branch] the authority to hear all disputes regarding every type of relationship between two or more parties.”

[Reproduced as written.]

Both parties are advised to seek legal advice on their next steps.

Conclusion

I dismiss the Application as I have found the Act has no jurisdiction in this matter.

Both parties are advised to seek legal advice on their next steps.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 05, 2013

Residential Tenancy Branch