



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened in response to an application by the Landlord for an early end of tenancy and an Order of Possession pursuant to section 56 of the *Residential Tenancy Act* (the "Act").

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the dispute under the jurisdiction of the Act?

Background and Evidence

The Landlord states that his mother, who owned the trailer in which the Tenant is living, died on October 3, 2012, and that on January 24, 2013 the Landlord became the administrator of the estate. The Landlord states that the Tenant has lived in the trailer with the mother for a long time as a tenant of the mother. The Landlord states that the Tenant was provided notice of the Landlord's application to become administrator but did not dispute the application. The Landlord states that his mother rented the pad for the trailer and that following his mother's death, the Landlord paid the pad rental arrears for February and March 2013.

The Tenant states that he has been the common law spouse of the Landlord's mother for over 21 years and lived in the trailer with the mother. It is noted that the tenancy

agreement for the pad rent indicates that the mother's rental agreement commenced approximately 15 years ago on June 1, 1998. The Tenant states that he has paid the pad rent for the trailer following the death of his spouse but was in arrears due to hydro payments that needed to be made. The Tenant states that he has rights and interests in the trailer as the common law spouse. The Tenant states that following the mother's death, the Landlord and he had agreed that they would sell the trailer and split the proceeds.

Analysis

Section 2 of the Act provides that the Act applies to tenancy agreements. Section 1 of the Act defines a tenancy agreement as an agreement between a landlord and a tenant respecting possession of a rental unit. If a tenant takes an interest in the land and buildings that is higher than the right to possession, then a tenancy agreement may not have been entered into. Although the Landlord claims that the Tenant was his mother's tenant, I find that the Tenant's evidence of a common-law relationship holds a ring of truth. Given this common law relationship between the Tenant and the Landlord's mother and considering the undisputed evidence of an agreement between the Parties that following the death of the Landlord's mother the trailer would be sold with the proceeds split between the Parties, I find that the Tenant has a higher right and interest in the property than mere possession and that the Landlord has failed to substantiate that a tenancy agreement exists between the Parties. As a result, I find that the Landlord's application must be dismissed as the Act does not apply to the dispute between the Parties.

Conclusion

The Landlord's application is dismissed.

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: March 13, 2013

Residential Tenancy Branch

