



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application for dispute resolution by the landlords for an order of possession, and a monetary order for unpaid rent.

This matter was first heard on April 05, 2013. The tenant although served with a notice of that hearing, did not attend the hearing. The Arbitrator granted the landlord's application and awarded the landlord an order of possession and a monetary order.

On April 09, 2013, the tenant filed an application for a review of the decision on the basis that this matter was not within the jurisdiction of the *Residential Tenancy Act*

The reviewing Arbitrator granted the tenant a review hearing. In the review decision, the tenant was instructed to serve the landlord with a copy of the decision and the notice of this hearing. The landlord stated that he was not served by the tenant nor did he receive any evidence from the tenant. The landlord stated that he found out about this hearing by calling the Residential Tenancy Branch office.

Despite having been granted a review hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given opportunity to present evidence.

Issue to be Decided

Does the *Residential Tenancy Act* apply to the parties and do I have jurisdiction to resolve this dispute? Is this dispute linked substantially to a matter that is before the Supreme Court?

If the *Residential Tenancy Act* applies, is the landlord entitled to an order of possession for unpaid rent and a monetary order for unpaid rent?

Background and Evidence

The landlord testified that the rental property was purchased in 2004 by three parties. Two of the parties MF and DM are named as landlords in this dispute. The third party TR is named as the tenant.

At the time of purchase, TR had a share of 29.6% but was not named on the title. TR agreed to live on the property and pay rent which he did until March of 2012. The property was listed for sale, but a purchaser was not found. Due to financial difficulties, TR requested MF to purchase half of his share in the property.

MF agreed to purchase half of TR's interest in the property. In May 2012, the parties entered into an agreement whereby TR's share was reduced to 14.8% of the property. Adjustments for rent and a loan were made to the amount of money that changed hands. TR was not included in the land title of the property. TR agreed to continue to rent the property. Despite this written agreement, TR failed to pay rent. In January 2013, MF and DM served TR with a notice to end tenancy.

MF and DM have applied for an order of possession and a monetary order for rent owed. On April 28, 2013, TR filed a petition in the Supreme Court of Canada to have this issue resolved.

MF and DM have filed evidence to confirm the above arrangements. They have also filed a copy of TR's notice of civil claim in the Supreme Court.

Analysis

A tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the Acts would not apply.

In this case, the landlord agreed that the tenant has interest in the property in the amount of 14.8%. Therefore I find that the tenant has part ownership of the premises. Accordingly I must decline jurisdiction as this matter is not covered under the *Residential Tenancy Act*

Section 58.2.c of *Residential Tenancy Act* addresses the jurisdiction of the *Residential Tenancy Act*. This section states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction

Based on the sworn testimony of the landlord and the documentary evidence filed by the landlord, I further find that this dispute is linked substantially to a matter that is before the Supreme Court of BC. Therefore I find that I do not have jurisdiction in this matter.

Conclusion

As the circumstances of this dispute fall outside the jurisdiction of the *Act*, the application is hereby dismissed in its entirety.

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 15, 2013

Residential Tenancy Branch

