



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPR, MNR, MNDC and FF
	Tenant:	CNR and FF

Introduction

This hearing was convened on applications by both the landlord and the tenant.

By application of May 9, 2013, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on May 6, 2013. The landlord also sought a monetary award for unpaid rent and recovery of the filing fee for this proceeding.

By application of May 7, 2013, the tenant sought to have the same notice set aside and to recover his filing fee for this proceeding.

This matter requires a preliminary decision on whether the *Residential Tenancy Branch* can take lawful jurisdiction.

Specifically, the named tenant states that he is not a tenant but a spouse of the owner of the property who is now resident in a care facility, no longer able to manage her own affairs and represented by her daughter who holds power of attorney.

According to the tenant, he and the landlord began living together in 1991 shortly after she had separated from husband. The two cohabited in her home for a number of years before moving into the subject property, a strata titled townhome.

The landlord was taken ill in 2009 after a couple of hospital stays, moved into the care facility in which she now resides. Her daughter was granted power of attorney on June 10, 2010 and submitted two reports from doctors attesting to the landlord's loss of capacity to look after her financial affairs.

The landlord's daughter stated that the family needs to sell the townhouse in order to fund her mother's continuing care.

The tenant submitted a number letters from other parties and greeting cards between the couple and other family members indicating that tenant and landlord had lived in a spousal relationship since 1991.

One couple who attended the hearing gave evidence that they had known the landlord before she began co-habiting with the tenant. They had socialized together with the tenant and landlord for many years, were close friends, and they stated that there was no doubt that the relationship was spousal.

The tenant stated that he had contributed financially to maintaining the home throughout the relationship.

The landlord's daughter stated the tenant had paid rent as stated on her mother's tax returns of 2006 and 2007 on which she also indicated her marital status as separated. The tenant conceded that she had done so as an accounting convenience but that the parties had co-mingled their finances.

I find there is sufficient question of the existence of a spousal relationship which might bestow an interest in property on the tenant. As only the Supreme Court of British Columbia would have jurisdiction to determine whether such an interest exists, I must decline jurisdiction in this matter.

Therefore, both applications are dismissed without leave to reapply pending a determination by the Court.

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: June 03, 2013

Residential Tenancy Branch