



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This is an application to cancel a Notice to End Tenancy that has been given for landlord use, however the respondent has challenged the jurisdiction of the Residential Tenancy Act over this matter and therefore I dealt with the jurisdictional challenge first.

Issue(s) to be Decided

Does the Residential Tenancy Act have jurisdiction over this matter?

Background and Evidence

On February 18, 2013 the respondent/landlord signed a document appointing his stepdaughter Power of Attorney; however a Psychiatrist at the Kelowna General Hospital had ascertained that the respondent/landlord did not have the mental capacity to grant a Power of Attorney.

The landlord's lawyer has argued that since the landlord did not have the mental capacity to grant a Power of Attorney, that Power of Attorney is invalid.

The landlord's lawyer has provided a letter from the stepdaughter's lawyer that agrees that the Power of Attorney was invalid.

The landlord's lawyer also argues that the landlord's stepdaughter subsequently signed a tenancy agreement with the applicant claiming to be acting on behalf of her stepfather, the landlord, when in fact she did not have the legal right to do so.

The landlord's lawyer further argues that there is no valid tenancy agreement in place and therefore no landlord-tenant relationship exists between the applicant and the respondent, and the Residential Tenancy Act has no jurisdiction over this matter.

The applicant/tenant had no arguments to refute the claims made by the landlord's lawyer; however she believes that this is a valid landlord-tenant relationship as she has paid monthly rent to the landlord stepdaughter.

Analysis

It is my finding that the Residential Tenancy Act has no jurisdiction in this matter.

It is also my finding that the respondent/landlords lawyer has shown that the Power of Attorney given to the respondent/landlords stepdaughter was invalid.

The applicant therefore never established a tenancy agreement with the owner/landlord of the property, as the evidence shows that the person who signed an agreement with the applicant was not acting as an agent of or on the authority of the owner/landlord of this property.

The Residential Tenancy Act only has jurisdiction over landlord tenant disputes, however since there is no landlord tenant relationship between these parties the Residential Tenancy Act has no jurisdiction, and I therefore have no authority over this claim.

Conclusion

I decline jurisdiction over this matter, and will not hear the merits of the claim. If the parties want to pursue this matter further they will have to do so through the Courts.

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 04, 2014

Residential Tenancy Branch

