



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 17, 2014, by the Applicant to obtain an Order of Possession for Cause.

The Applicant submitted documentary evidence which indicated that the Respondents were served with copies of the application for dispute resolution and Notice of dispute resolution hearing, on May 9, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence.

Issue(s) to be Decided

Does this matter fall within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

The Applicant provided affirmed testimony that indicated the Respondents to this dispute were not "her" tenants; they were the co-owner's tenants. She clarified by stating that the title to the property indicates the owners are tenants in common listing her share as 40% and the co-owner as having 60% ownership. The Applicant submitted that she had a verbal arrangement with the majority owner that the Applicant would own the basement, the smaller unit, and the majority owner would own the upper floor.

The Applicant has applied to end the tenancy that the majority owner has entered into with the upper floor tenants. The Applicant is not a party to their tenancy agreement but is co-owner of the property. She argued that the upper floor tenants' behaviour has caused her tenant in the basement suite to move out. She has not been able to secure new tenants because of the debris and noise being caused by the upper tenants. She indicated that she is not on speaking terms with the majority owner. The Applicant stated that she is of the opinion that as co-owner she can evict the upper floor tenants.

Analysis

The *Residential Tenancy Act* defines a "**landlord**", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Upon review of the evidence before me I find the Applicant to this dispute provided insufficient evidence to prove she has the authority to act as landlord or agent to the Respondents. Furthermore, the evidence supports that this matter is substantially linked to the division and/or ownership of the property and therefore, the *Residential Tenancy Act* does not apply. Accordingly, I decline jurisdiction in this matter.

Conclusion

I HEREBY DECLINE to hear matters pertaining to this dispute, for want of jurisdiction.

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 13, 2014

Residential Tenancy Branch

