



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant for an order of possession based on a claim of unpaid rent and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

This application was brought under the *Manufactured Home Park Tenancy Act*. Although the residential property in question is in fact a manufactured home, that Act does not apply. The tenancy between the landlord of the Manufactured Home Park and the owner of the manufactured home is not at issue; rather it is the purported tenancy *within* the manufactured home between the Applicant and Respondent.

More problematic to this application is the status of the parties. The Applicant, in her capacity as executrix of her mother's estate made this Application. The Respondent is the Applicant's brother. Counsel for the Applicant submitted that the Applicant and Respondent are the only beneficiaries of the estate of the owner of the rental unit, their mother. The estate has not been finalized. Although section 1(b) of the *Residential Tenancy Act* provides that a landlord includes heirs, assigns, personal representatives and successors in title to the owner of a rental both parties have an interest in the

property as heirs and as such, they are both potential landlords pursuant to the *Residential Tenancy Act*.

Furthermore, the parties agreed that the Respondent moved into the manufactured home with his mother (the deceased) approximately June 2009. He contributed towards the household expenses and while he had his own bedroom, he and his mother shared a bathroom and kitchen. He is an occupant, not a tenant. There is no evidence a tenancy agreement was established.

Furthermore, it is evident the Respondent has an interest in the property beyond that of mere possession, and property ownership is within the discretion of the Supreme Court. Therefore I have no jurisdiction under the *Residential Tenancy Act*.

There are obvious legal issues to be resolved between these two siblings; however, the more appropriate forum for resolution of issues relating to their mother's passing is the Supreme Court.

Conclusion

The application is dismissed as there is no jurisdiction under the *Residential Tenancy Act*.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 10, 2014

Residential Tenancy Branch

