



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, OPT, O

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant for an Order of Possession of the dispute address, to authorize the Applicant to change the locks of the dispute address, and for ‘Other’ issues.

Preliminary Issues

The Applicant appeared for the hearing with an advocate and requested an adjournment based on the fact that the Tenant had undergone eye surgery and had submitted documentary evidence one day prior to the hearing. The Applicant was informed of the deadlines of the service of documentary evidence; this was also made clear in the information provided to the Applicant when she made her Application.

The Respondent appeared with his partner and his Legal Counsel who made submissions for the Respondent during the hearing. Legal Counsel opposed an adjournment submitting that this was a stall tactic by the Applicant and asked that jurisdiction be determined in this case.

As the Applicant was in good understanding of my preliminary questions and was able to respond adequately, I continued to only hear the parties’ evidence in relation to the jurisdiction of the *Residential Tenancy Act* (the “Act”) in this case. I informed the parties that after I had determined jurisdiction I would then consider the Applicant’s request for adjournment.

Legal counsel had provided a number of lengthy written submissions in relation to the fact that the Act did not apply to this case. Legal counsel pointed me to the fact that the Respondent is the legal owner of the dispute address and that he shares both bathroom and the only kitchen in the premises with the Respondent.

Furthermore, the Respondent describes in the detail written submissions how the living arrangement with him and the Applicant came about. The Respondent declares in a signed affidavit that the Respondent and his late wife offered the Applicant temporary accommodation in their home as a gesture of good will because the Applicant was going through some hardship. The Applicant was not required to pay any rent and was only required to pay for hydro, telephone services and groceries.

The Applicant confirmed that she was still residing in the dispute address and that the Respondent was threatening to evict her within 15 days and that she needed more time to vacate the premises. The Applicant confirmed that she shared kitchen and bathroom facilities with the Respondent and that she had paid no rent during the time she had resided in the property. The Applicant also confirmed that she had paid in cash to the Respondent for telephone and hydro services including contributions towards the property taxes.

The Applicant continued to make submissions with respect to allegations that she was the partial owner of the dispute address. I informed the Applicant that this dispute would be outside of the realms of the Act.

Analysis & Conclusion

Section (4) (c) of the Act explains that the Act does not apply to living accommodation in which the Applicant shares bathroom or kitchen facilities with the owner of that accommodation.

Furthermore, Policy Guideline 9 to the Act explains when a tenancy under the Act has been entered. It also lists a number of conditions an Arbitrator **may** consider surrounding the occupation of the premises and what the parties intended in the circumstances. The guideline states that **some** of the factors that **may** weigh **against** finding that a tenancy exists between the parties are as follows:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.

- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

Based on the above provision of the Act, I find that the Applicant and the owner of the dispute address share kitchen and bathroom facilities and therefore the Act does not apply in this case.

Furthermore, in relation to the considerations of Policy Guideline 9 above, I find that occupancy in this case was given to the Applicant by the out of generosity Respondent rather than an intent to enter into a tenancy. The Applicant does not pay rent for residing in the property and only pays for utilities and property taxes. Therefore, I find that no tenancy under the Act had been entered into or established between the parties.

As a result, I find that based on the above reasons, the Act does not apply and therefore there is no authority or jurisdiction in this tenancy.

The Application is dismissed pursuant to section 62(4) (b) of the Act.

However, the Applicant is at liberty to seek advice in relation to pursuing these matters using other legal remedies.

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: January 13, 2015

Residential Tenancy Branch

