



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicants to cancel a notice to end tenancy for the Respondent’s use of the property, and to recover the filing fee.

One of the Applicants appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. However, there was no appearance by the Respondent for the 20 minute duration of the hearing or any submission or written evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Applicants for this hearing.

The Applicant testified that he served the Respondent with a copy of their Application and the Notice of Hearing documents by registered mail on March 26, 2015. A copy of the Canada Post tracking number was provided into written evidence. In addition, the Applicant testified that he had spoken with the Respondent in person and by e-mail regarding the hearing. The Applicant testified that the Respondent indicated that she wanted to withdraw the notice to end tenancy as the Respondent acknowledged that the dispute resolution hearing was not the appropriate venue for this matter to be decided upon.

Based on the evidence of the Applicant, I was satisfied that the Respondent had been served with notice of this hearing. However, before I proceeded to hear evidence relating to the notice to end tenancy, I first turned my mind to the Applicants’ submissions and arguments regarding jurisdiction of the *Residential Tenancy Act* (the “Act”) in this matter.

Issue to be Decided

Does the Act have jurisdiction in this case?

Background and Evidence

The Applicant testified that the Respondent is his mother who is the owner of the dispute property and has title of the property in her name. The Applicant explained that he moved to the dispute property in October 2011 with his family. The reason for moving to the location was because the Applicant had given up his job and wanted to be closer to his mother so that he could take better care of her; however, since this time the relationship between the parties has deteriorated.

The Applicant testified that he has not paid his mother any rent. Rather, he pays the Respondent approximately \$500.00 per month which goes towards renovation costs the Respondent had put into the property before he had moved in. The Applicant confirmed that at no time was a tenancy agreement completed or signed and no security deposit for the dispute property was requested or paid.

The Applicant further explained that the monthly payments he makes to his mother towards the renovation costs are not always fixed; sometimes he is not able to make the monthly payment based on his work hours and sometimes he makes larger monthly payments. The Applicant also confirmed that there was no fixed date of these payments he makes to his mother and that some payments he makes, especially the large ones, include taxes and insurance costs related to the property.

The Applicant testified that he pays utilities for the property and that the Respondent is not required to give any written notice to enter the property, although consent is required. The Applicant submitted that no tenancy has been established in this case and therefore the Act does not apply.

Analysis & Conclusion

Policy Guideline 9 to the Act on Tenancy Agreements and Licences to Occupy explains when a tenancy under the Act has been entered into. 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 undisputed details provided for this hearing, I find that a tenancy under the jurisdiction of the Act has never been established in this matter. This is based on evidence that: at no time was payment of a security deposit required or made; the parties did not sign or engage into a written or oral agreement that would suggest that a tenancy had been entered into; and, a fixed amount of rent is not being paid by the Applicants on a set date.

I find that the evidence provided by the Applicants points to a situation where the parties had a family relationship and occupancy was given out of generosity rather than a tenancy situation. This is further supported by the fact that the Applicants pay property taxes and insurance costs towards the property which is not a normal requirement in a tenancy situation.

Based on the foregoing, I must decline jurisdiction in this matter. The parties are at liberty to seek alternative legal remedies to address their dispute.

Conclusion

For the reasons set out above, I decline jurisdiction in this matter.

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: April 30, 2015

Residential Tenancy Branch

