



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy; to cancel a Two Month Notice to End Tenancy for landlords use of the property; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing along with witnesses for the tenant which were not called to give testimony and Counsel for the landlord. The tenant and landlord gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence.

Issue(s) to be Decided

- Do I have jurisdiction in this matter?
- If so is the applicant entitled to more time to cancel the Notice to End Tenancy?
- If so is the applicant entitled to have the Notice to End Tenancy set aside?

Background and Evidence

The tenant testified that this was a family arrangement between the tenant and her mother for the tenant to live in the rental unit and act as a property manager for her mother. The tenant collected rent from the other two units on the property and this was

applied to the mortgage on the property. Any shortfall was made up by the tenant and her husband. There was also a life insurance that covered the mortgage in the event of the death of the tenant's mother and this was paid from the rents collected by the tenant. The tenant testified that \$500.00 was paid each month to her mother to pay back the personal loan taken out for the down payment used to purchase the property; however this was not rent for the unit the tenant resided in.

The tenant testified that it was agreed between the tenant and her mother that the property would remain in her mother's name until the down payment and mortgage were paid up as the tenant was living in a troubled marriage at that time and the tenant and her mother did not want the property in the tenant's name until she was divorced. The tenant testified that this arrangement continued for the last 10 years. The tenant has been responsible for collecting rent and fulfilling all the functions of a landlord including repairs and maintenance on the property.

The tenant testified that her mother passed away on December 11, 2013 and the property was transferred solely into her father's name as part of the estate. In January, 2014 the tenant's father contacted her and said the tenant had to put an amount into the mortgage account; however, the mortgage had been paid off by her mother's life insurance. The tenant testified that her father asked the tenant if she now thought she owned the property.

The tenant testified that she has never paid rent, there has never been a tenancy agreement in place and no security deposit was ever paid. The tenant testified that the Residential Tenancy Branch has no jurisdiction in this matter.

Counsel for the landlord submitted that the tenant paid \$500.00 and this was put into the mortgage account and the landlord considered it to be rent. The property was owed as a joint tenancy between the tenant's mother and father and after the tenant's mother passed away the property passed solely to the tenant's father. Counsel for the landlord agreed the tenant's mother's life insurance paid off the mortgage; however, there had

been a re-mortgage to build an addition to the house and this was not covered by the life insurance policy.

Counsel for the landlord submits that the tenant and her husband at the time were allowed to move into the property but it was always known that the landlord wanted to use it as a retirement home and the tenant was able to live there paying a reduced rent until her children had left home. The landlord had tried to get the tenant to sign a tenancy agreement in 2014 but the tenant refused. There was never an intention for the tenant to purchase the property or to continue to live there. The landlord has now sold his own home and wants to move into the property.

The tenant testified that it had been discussed with her mother that they would turn the children's room into a bed and breakfast after they had left home and that was why the addition was put on the house. The \$25,000.00 borrowed still had to be paid back but any money paid by the tenant was never considered to be rent. The tenant testified that her father never came on to the property and everything was dealt with between the tenant and her mother.

Analysis

I have considered the explanations put forth by both parties. The parties have presented contradictory testimony concerning whether or not a tenancy is in place. From the evidence presented I am unable to determine that a tenancy was created between the tenant and her parents and it appears to be an agreement more in line with a family arrangement for the applicant to live in a unit on the property and act as the property manager. No tenancy agreement was signed between the parties, there is no evidence that the tenant had to pay rent for her unit and no security deposit was paid.

Consequently, without further evidence to show that a tenancy exists between the parties then I find that the *Residential Tenancy Act* does not apply and I decline jurisdiction in this matter.

Conclusion

As I have declined jurisdiction in this matter, this application is dismissed without leave to reapply. The parties are at liberty to resolve this matter through another legal forum.

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: May 27, 2015

Residential Tenancy Branch

