



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC

For the landlord - OPC

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. PB applied to cancel a One Month Notice to End Tenancy for Cause. SR applied for an Order of Possession for Cause.

PB and SR attended the conference call hearing with a Lawyer for the landlords and an advocate for PB. PB and SR gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. PB's advocate stated that they did not send their hearing package to the landlords within three days of filing the application. The landlord's lawyer stated that they did receive PB's hearing package in plenty of time and are ready to proceed with both applications today. 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 Issues

A discussion took place as to the matter of jurisdiction and whether or not this is a matter that falls under the *Residential Tenancy Act (Act)*. The landlords' lawyer submitted that PB has always lived in the rental unit with his parents and it is a family arrangement. Late last year PB's mother passed away and PB's father was placed in a care home. PB has continued to reside in the family home. Due to many financial

considerations in the upkeep of the home and PB's father's care, PB's sisters, one of whom has power of attorney for their father, asked PB to contribute towards some of the costs of keeping the home such as the mortgage, the utilities and taxes and their father's care home costs. The parties agreed PB would pay \$500.00 a month to assist the financial burden placed on the family.

PB and SR filled in a shelter form so PB could get help with this cost as he receives disability payments. The shelter form states that this is not a tenancy agreement and should only be used if a tenancy agreement is not available. The form is used for information for the Ministry only.

SR testified that no security deposit was paid; their brother agreed to pay \$500.00 on the 1st of each month and has paid the \$500.00 intermittently throughout each month. Prior to November, 2014 their brother had never contributed financially as it was always a family arrangement. The \$500.00 was to help the family out financially. SR testified that they do not have a key to the property but as the back door does not lock they are able to enter the home at any time. Although they did give PB a notice informing him they are going to come to the home when they came to clear up their mother's belongings. PB does not have full use of the property and the upstairs and the living room are not used by PB.

The landlords' lawyer asks questions of SR concerning the arrangement for PB and asks the following questions:

Q – Is this a family or personal relationship?

A – PB is my brother he has lived with our parents all his life except for a short period when they purchased him his own apartment.

Q - What would the market rent be for this home?

A - \$1,800.00 to \$2,000.00 a month as it is a four bedroom, 3,000 square foot home.

Q – Why does PB not pay market rent?

A – PB is on disability. The mortgage is around \$1,500.00 plus property taxes and utilities and the expenses of paying for their father's care home. PB was asked to

contribute \$500.00 a month towards these expenses as he will have a financial interest in the property in the future.

Q – Are you making any money?

A – No the family do not even come close to paying the expenses and the insurance company will not insure the home any longer.

Q – What Notice would you expect PB to give if he vacated the home

A – We just want him to clear up his mess and we would expect a months' notice so the home could be sold.

The lawyer for the landlord submitted that it was never the intention for SR to become her brother's landlord or to rent the house to PB or anyone else

The landlord's lawyer asked the landlord's witness AB questions. AB is the other sister of SR and PB.

Q – What was the nature of the dialogue round the monthly payment from PB?

A – It happened prior to November, 2014 and AB spoke to PB about paying some of the bills and how much it cost to keep PB in the house with the mortgage payments, utilities and taxes. AB thought \$500.00 was a fair amount for PB to contribute as he is on disability. AB testified that she was trying to explain that there was more money going out then coming in.

Q- What capacity did you represent yourself during this conversation

A – as a sibling.

The landlords' lawyer submitted that no tenancy has been established and PB was provided with two avenues; one being the One Month Notice to End Tenancy for Cause and the other was a Notice to Terminate License to Occupy.

PB's advocate submitted that a tenancy was created when the landlord and tenant filed out the shelter form for PB's rent. The landlord also has the option of renting some of the other rooms out if they are not getting the market rent.

PB testified that he does have use of the family room, the laundry room, the garage, a bedroom and a bathroom. There are some areas of the house PB does not use such as his parents' bedroom upstairs and the living room. His sisters enter without notice and PB is not always prepared for that. PB testified that he pays \$500.00 a month for rent and also pays the cable bill and does maintenance around the home.

PB agreed that when he first lived in the home with his parents it was a family arrangement and he did pay some money for his board but he then stopped doing that and now pays rent.

Issue(s) to be Decided

- Has a tenancy been established?
- If there is a tenancy is PB entitled to an Order to cancel the Notice to End Tenancy?
- If there is a tenancy is the landlord entitled to an Order of Possession?

Analysis

I have considered the matter of jurisdiction and whether or not a tenancy has been established between the parties. In light of the fact that PB has lived in this home most of his life and has only started to contribute financially in November, 2014 I must determine if the financial contribution of \$500.00 is rent or a family arrangement towards the cost of keeping the home.

The tenant will have a financial gain in the future and this home is an asset to PB and his sisters; however, if the \$500.00 is considered to be rent then a tenancy has been established and if it is considered to be a contribution towards the family expenses then I must find that no tenancy agreement has been established either in writing or orally.

Having considered the testimony of the parties in attendance and the documentary evidence put forward, I find there is insufficient evidence to show that a tenancy

between the parties was established in November, 2014. I find that this is a family arrangement between the parties to ensure the home is financially secure to protect the home as a future asset to the family. The landlord's witness who is another sister of PB testified that she never represented herself as a landlord when she asked the PB to contribute towards the outgoings of the family. I find the landlord's evidence more compelling that a tenancy has not been created and that this is simply a family arrangement for PB to pay \$500.00 a month towards the expenses of the home and family.

Conclusion

Due to the reasons given above I must decline jurisdiction in these matters.

The landlords' application is dismissed without leave to reapply.

The tenant's application is dismissed without leave to reapply.

The parties are at liberty to seek resolution in 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: June 16, 2015

Residential Tenancy Branch

