



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 2 Month Notice to End Tenancy for the Landlord's Use of the property, to recover the filing fee and for other considerations.

The Applicant said he served the Respondent with the Application and Notice of Hearing (the "hearing package") by registered mail on April 20, 2015. Based on the evidence of the Applicant, I find that the Respondent was served with the Applicant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the hearing the circumstances of this tenancy were discussed. The property is owned jointly by the Respondent/Landlord and one of the Applicants/Tenants. The Respondent/Landlord said that because she owns the property jointly and has a joint bank account where the rent is paid into she believes that she is the Landlord. The Respondent/Landlord continued to say she does not have a tenancy agreement with her name on it and she did not submit any evidence to show she was jointly named on the bank account to show that rent was paid to her. The Respondent/Landlord said she believes she is a Landlord in this situation. I find it unclear if the Respondent is actually the Landlord due to a lack of evidence.

The Tenant J.K. said that he is a joint owner of the property and he is the Landlord. As well the Tenant J.K. said he is living in the rental unit. Tenant B.K. confirmed that Tenant J.K. has been living in the unit for three years. The Tenant J.K. continued to say the tenancy agreement submitted into evidence was completed by his sister K.W. who has power of attorney for him and acts as his agent when he is out of the country. The Tenant J.K. said this shows he is the Landlord.

As a result of these preliminary discussions of the situation I accept that the Landlord on the tenancy agreement is Tenant J.K through his agent K.W. Further because the Landlord is an owner and is living in the unit and sharing the kitchen and bathroom areas with the other Tenants, I find this living situation is not a tenancy as defined by the Residential Tenancy Act. Section 4(c) of the Act states that the Act does not apply to

situation where there is shared kitchen and bathroom with the owner of the property. Consequently there is no tenancy between the Applicant and the Respondent; therefore I do not have jurisdiction to make a finding in this matter.

In the absence of evidence to show there is a tenancy between the Applicant and Respondent the Residential Tenancy Branch does not have jurisdiction in this situation. I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The application is dismissed for lack of jurisdiction

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 02, 2015

Residential Tenancy Branch

