



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for the filing fee

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant but stated that he had not served a copy of his evidence on the tenant. Both parties gave affirmed testimony.

At the outset of the hearing the party named as 'tenant' in this application informed me that she was part owner of the rental property. The applicant agreed. The parties are siblings and have inherited this home from their parents who are now deceased.

Issues to be decided

Does the *Residential Tenancy Act* apply to the parties? Do I have jurisdiction to resolve this dispute? If the *Residential Tenancy Act* applies, is the landlord entitled to an order of possession and a monetary order for the filing fee?

Background and Evidence

The applicant testified that the rental property was owned by his parents until they both passed away in August 2012 and left the property to their children. The party LL, named as 'tenant' has resided in the lower level of the home for the past twenty years but is currently not living in the rental property. LL has rented out the home and is collecting rent from the occupants.

The applicant BR testified that even though he is part owner, he does not receive a portion of the rent. TL argued that she pays the mortgage and the property taxes.

Analysis

Residential Tenancy Policy Guideline# 27, states that a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the *Act* is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into and the Arbitrator may decline jurisdiction because the *Act* would not apply.

Based on the testimony of both parties, I find that both parties are heirs and successors in title to the owner of the rental property. Even though BR has named TL as a tenant, I find that TL has part ownership of the premises and therefore the relationship between the parties is not that of a landlord/tenant, but is one of co-owners.

Accordingly, I find that I do not have jurisdiction in this matter.

Conclusion

The application is dismissed.

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 05, 2015

Residential Tenancy Branch

