



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing was convened to address a claim by the purported landlord, DP, for a monetary order. Both parties participated in the conference call hearing.

The hearing was originally adjudicated on March 23, 2015 and a decision was issued on March 24, 2015 awarding DP a monetary order. The purported tenant, NC, filed an application for review consideration and in a decision dated April 20, I ordered that a new hearing take place and I suspended the March 24 decision and order.

Issue to be Decided

Does this matter fall within the jurisdiction of the Residential Tenancy Act?

Background and Evidence

The parties agreed that on December 20, 2010, they executed a document entitled "Trust Declaration" in which they agreed that the parties each held an equal ownership interest in the subject property with DP holding title in trust for NC. DP testified that the Trust Declaration is not an instrument registerable with the land title office, although he provided no proof of that, and stated that there is no trust in place. DP stated that he is a professional property manager and that he drew up the Trust Declaration because he wanted to escape strata bylaws prohibiting renting. He insisted that no trust exists, that the tenant does not have and has never had an ownership interest in the property, beneficial or otherwise, and that the relationship between the parties is exclusively one of landlord and tenant.

NC testified that he rented the subject property in response to an advertisement which solicited parties who wanted to "rent to own" and that his monthly payments over the years subsequent to moving into the rental unit were to be credited to him as a downpayment for the unit.

Analysis

The *Residential Tenancy Act* takes jurisdiction over tenancy agreements in which the tenant has nothing more than a mere right to possession. Although DP claimed that he drew up the Trust Declaration to perpetrate a fraud rather than give NC an ownership interest, I am not satisfied on the balance of probabilities that this is the case. NC insisted that he has an ownership interest and as DP has provided insufficient evidence to prove that the Trust Declaration is a fraudulent instrument, I find that it is very possible that NC has more than a mere right to possession. Further, since DP's testimony is that he wilfully lied to the strata council, I am unable to find that he is credible.

For these reasons, I decline jurisdiction. DP may pursue his claim in Small Claims Court. I order that the decision and order issued on March 24, 2015 be set aside and of no force or effect.

Conclusion

The March 24 decision is set aside. Jurisdiction over this claim is refused.

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 08, 2015

Residential Tenancy Branch

