



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RPP, RP, RPP, FF, O

Introduction

This hearing convened as a result of an Application for Dispute Resolution filed by the Applicant wherein he sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the Respondent on August 11, 2015.

The Applicant appeared on his own behalf. The Respondent was represented by counsel, S.G. and P.N. The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Background

P.N. submitted that a tenancy between the parties began in the mid 1980's. She confirmed that no tenancy agreement existed. She submitted that monthly rent was payable in the amount of \$900.00 per month, and stated this figure was derived from correspondence between the parties. She confirmed that this amount was paid through services performed by the Applicant.

P.N. advised that the Respondent is the father of the Applicant's estranged wife. She further confirmed that the Respondent's daughter and the Applicant separated in May of 2014.

P.N. stated that the Applicant was first asked to pay rent in May of 2014.

P.N. further advised that the Respondent's daughter commenced a family law proceeding in the B.C. Supreme Court in June or July of 2015. She further stated that the Applicant recently named the Respondent as a third party to these proceedings.

P.N. confirmed that the Applicant, by Counterclaim to the family law proceeding, was asserting a proprietary interest in the property in which the alleged rental unit was located. Although not available to me at the time of the hearing, the Applicant had introduced in evidence pages 6, 7, 8 and 9 of the Counterclaim filed by the Applicant in which it is clear he claims an interest in the property.

Counsel for the Respondent submitted that the Applicant was a tenant, not an owner until such time as the Supreme Court found merit in his claim to an interest in the property. She characterized the arrangement between the Applicant, the Respondent and the Respondent's daughter as a "family arrangement whereby they have lived in this property without paying rent for a number of decades".

Counsel for the Respondent introduced in evidence letters written to the Applicant from S.N. dated September 16, 2014, September 24, 2014, and August 11, 2015. In the letter dated August 11, 2015, counsel for the Respondent writes that the Applicant owes 16 month' of rent totalling \$7,200.00, and representing a monthly payment of \$450.00.

The Applicant submitted that he and the Respondent's wife, as well as their children (who are now adults) lived on the subject property since the 1980's. He stated that he was a family member who helped out on the farm, and that any reference to "rent" in his documentation was at the insistence of the Respondent.

In reply, P.N. stated that the Applicant produced copious documents wherein he referenced rent being paid by way of labour. She further stated that the Respondent denies having anything to do with the production of these documents, or the characterization of the Applicant's labour as rent.

Analysis and Conclusion

The parties agreed that the Applicant, his estranged spouse and the children (for a period of time until they were adults) resided on the subject property for approximately 30 years. In May of 2014, the Applicant and his estranged spouse separated. It appears that at approximately the same time the Respondent, through his counsel, advised the Applicant that his services were no longer required in relation to upkeep of the property and asked the Applicant to pay rent.

The *Residential Tenancy Act* defines a Landlord as including an “owner”. Should the Applicant be found by the B.C. Supreme Court to have a proprietary interest in the property, he would more properly be characterized as a Landlord, not a Tenant. Accordingly, until such time as the B.C. Supreme Court decides the issue of the Applicant’s claim to the subject property, I am unable to find that a tenancy exists.

Further, as this matter is linked substantially to a matter before the B.C. Supreme Court, I decline jurisdiction pursuant to section 58(2)(c).

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: November 05, 2015

Residential Tenancy Branch

