



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, LRE, OLC

Introduction

The Application for Dispute Resolution filed by the applicant seeks the following:

- a. An order authorizing the applicant to change the locks to the rental unit.
- b. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- c. An order that the landlord comply with the Act, regulations and/or the tenancy agreement.

The agent for the applicant is his sister. She stated she wants the Notice to End Tenancy served by the landlord cancelled as part of the relief she sought in "c" above.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the respondent by mailing, by registered mail on September 2, 2015.

Preliminary Issue:

The solicitor for the respondent submitted that this is not a residential tenancy matter and that I do not have jurisdiction to consider the matter.

Issue(s) to be Decided

The preliminary issue to be decided is whether the Residential Tenancy Branch has jurisdiction to consider this application.

Background and Evidence

The property was purchased by the respondent approximately 4 years ago. Y S (father) and the respondent lived together in a common law relationship during that period of time.

The applicant is the adult son of Y S (father). The applicant suffers from schizophrenia and depression. There is a dispute between the parties as to when the applicant moved into the rental unit. The applicant spent a period of time overseas. However, approximately 1/2 years ago he moved into the rental property and lived to live with his father and the respondent. The respondent has two young daughters. .

The relationship between Y S (father) and the respondent broke down and Y S (father) vacated the rental unit in August 2015. The respondent testified that Y S (father) told her he was not able to take his son with him at that time but that she should serve a one month Notice to End Tenancy on the applicant and he would facilitate his departure in the near future.

The respondent served a one month Notice to End Tenancy on the applicant in late August 2015. The one month notice did not give a reason for termination.

The applicant initially lived in an upstairs bedroom and shared bathroom and kitchen facilities with his father, the respondent and the respondent's two children. However the applicant was disruptive as he was up much of the night. He eventually moved to a bachelor suite in the basement that had a hot plate and bathroom..

The respondent testified the applicant has never paid any rent. In September 2015 the applicant's mother provided the respondent with a cheque in the sum of \$350. The cheque had the notation "Rent for October Bachelor's Suite?" The respondent refused to accept this.

The applicant did not testify or provide written evidence. Y S (father) provided a letter indicating that he is the father of the applicant, that he intends to apply for Property Division as he is a 50% owner of the property, he paid \$100,000 down deposit for that property and is the second mortgage holder as well. The letter states that the applicant is not to vacate as he owns 50% of the property. The letter states that he will be filing at the BC Supreme Court to become a sole occupant of the basement of this property and he will move into the basement where the applicant is resides until the Supreme Court

of BC decision is finalized regarding the Property Division. The agent for the applicant was unclear as to a lot of the evidence that was presented.

The solicitor for the respondent stated the following:

- Y S has filed a Notice of Civil Claim in the Supreme Court seeking a monetary order against the respondent. She has filed a defence to that claim.
- She has been in contact with another lawyer who has threatened to file a foreclosure application on behalf of Y S.
- Y S has also threatened to file a claim under section 90 of the Family Law Act

She also stated there is a co-habitation agreement between L S and the respondent dealing with these issues. The solicitor states there is a safety concern for the respondent and her two daughters with the applicant in the basement and his father living elsewhere.

Analysis

The definition section of the Residential Tenancy Act includes the following:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 2 and 4 of the Residential Tenancy Act provides as follows:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

What this Act does not apply to

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

Policy Guideline #27 provides as follows:

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. In such a case the RTB may again decline jurisdiction because the Acts would not apply. In the case of a tenancy agreement with a right to purchase, the issue of jurisdiction will turn on the construction of the agreement. If the agreement meets either of the tests outlined above, then the Acts may not apply. However, if the parties intended a tenancy to exist prior to the exercise of the right to purchase, and the right was not exercised, and the monies which were paid were not paid towards the purchase price, then the Acts may apply and the RTB may assume jurisdiction. Generally speaking, the Acts apply until the relationship of the parties has changed from landlord and tenant to seller and purchaser

After carefully considering all of the disputed evidence I determined this is not a residential tenancy matter and that the Residential Tenancy Branch does not have jurisdiction for the following reasons:

- I determined the applicant came to live in the rental unit to live with his father. His father was living in a common law relationship with the respondent at that time and not a residential tenancy relationship. The applicant would not be living in the rental property had he not come to live with his father.
- The respondent is the registered owner of the rental property. The applicant shared the bathroom and kitchen facilities with her at the time when he first arrived to live with his father.
- The agent for the applicant failed to prove the applicant paid rent to the respondent.
- The agent for the applicant failed to prove there was a written tenancy agreement or that a security deposit was paid.
- The evidence presented by Y S (father) in the form of the undated letter indicates that he considers he has financial claims against the property owned by the respondent because of his common law relationship but does not provide sufficient evidence of a residential tenancy relationship.
- I accept the testimony of the respondent that she has never received rent from the applicant (apart from the cheque dated September 30, 2015 from the applicant's mother that was not accepted by the respondent).
- The fact the respondent gave the applicant a one month Notice to End Tenancy at the request of Y S (father) does not make this a residential tenancy matter.

Conclusion

I conclude I determined this is not a Residential Tenancy matter and that the Residential Tenancy Branch does not have jurisdiction. I determined the applicant does not have a legal right under the Residential Tenancy Act to occupy the rental unit.

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 09, 2015

Residential Tenancy Branch

