



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COSY SUITES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with the applicant's claim pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for landlord's use pursuant to section 55; and
- authorization to recover his filing fee for this application from the respondent pursuant to section 72.

Both parties were represented at the hearing. The respondent was represented by its agent who is an employee.

At the hearing I raised my concern with the parties that this Branch lacked jurisdiction to hear the matter.

Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction over this dispute?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

The respondent is a property management company. The respondent contacted the former owner to act as the property management company for the rental unit.

On 1 April 2012, the respondent and the former owner of the rental unit entered into an agreement on the Residential Tenancy Branch standard form. On that agreement the respondent is listed in the space for a tenant as an "agent". The agent testified that the

respondent and former owner did this so that the former owner could collect a security deposit from the respondent.

The agent testified that the respondent and the former owner entered into a concurrent agency agreement regarding the property management of the rental unit. I was provided with a copy of this agreement. The agreement sets out that the former owner granted the respondent the right to “advertise the Property, show it to prospective tenants, lease and sublease to prospective tenants, lease preparation, renewal, and overall management of the subject property.”

At some point prior to June 2015, the former owner sold to an interim owner. This interim owner did not retain possession for long and made a quick sale to the applicant. The applicant did not become aware of the contract between the former owner and the respondent until after the sale was complete.

The applicant became the owner of the rental unit in June 2015.

Analysis

Subsection 2(1) of the Act sets out that:

Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

In accordance with subsection 2(1) of the Act, there must be a tenancy agreement between the parties in order for me to take jurisdiction over this matter.

“Tenancy agreement” is defined in the Act:

"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;

On the basis of the existence of the property management agreement and the property management business of the respondent, I find that, notwithstanding the existence of the signed tenancy agreement, the relationship between the former owner and respondent was a commercial relationship for property management and not that of a tenancy agreement for the purposes of the Act. In particular, the relationship between the parties was not for the purpose of granting the respondent the right to possess or occupy the rental unit, but to acquire tenants on behalf of the former owner and otherwise act as property management.

On this basis, I decline jurisdiction over this matter.

Conclusion

I decline to hear the landlord's application. Nothing in this decision prevents the applicant from bringing his claim before a body of competent jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 31, 2015

Residential Tenancy Branch

