



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

The Application for Dispute Resolution filed by the landlord seeks an Order for Possession for non-payment of rent.

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. The parties acknowledged they had received the documents of the other party.

I find that the 10 Notice to End Tenancy was served on the Tenant by posting on October 31, 2015. I find that the Application for Dispute Resolution/Notice of Hearing was served on the tenant by posting on November 20, 2015.

The respondent submitted this is not a residential tenancy matter and that I do not have jurisdiction to hear this application.

Preliminary Matter:

The preliminary issue is whether the Residential Tenancy Branch has jurisdiction to hear this application?

Background and Evidence

The applicant testified as follows:

- She is the registered owner of the property.
- She is the mother of the respondent. He is the youngest of 4 children.
- The respondent is 46 years of age. He has lived in the rental unit for approximately 25 years and lived in the upstairs portion of the house prior to that.
- The rental unit was previously rented to some of her other children.

- There is no written agreement between the parties. The respondent has not paid a security deposit.
- The respondent originally paid rent of \$400. It was increased to \$675 and then to \$1000 about 4 years ago.
- The respondent has not paid any rent since October 2013 with the exception of a \$750 payment on February 14, 2014 when the respondent was going through bankruptcy problems.
- The applicants testified the respondent often yells at her and threatens her. She is afraid for her safety.
- She further testified the respondent completed some renovation work in the rental unit. However, he has caused significant damage to the rental unit as the entire backside is down to 2 x 4's with no ceiling or walls.

The respondent testified as follows;

- The payments he made to his parents was not rent but contributions to the household when his parents were desperate and unable to pay bills when due.
- He testified he has contributed over \$100,000 in work and \$50,000 in materials to the house. The applicant denies this.
- His parents promised him an ownership interest in the house.
- His siblings are manipulating the applicant.
- He started paying \$1000 as a financial contribution to maintain the house after his father passed away.
- He paid the cablevision cost for many years. However, he cut the cable in August 2015.
- The actions of the applicant and his siblings has caused him ill health including thoughts of suicide

Analysis::

This is a very unfortunate case. With the exception of a \$750 payment in 2014 the respondent has not made payments to his mother for over 2 1/2 years. Further, I accept the testimony of the applicant that the respondent has yelled at her and she feels threatened by him. However, after carefully considering all of the evidence I determined this is not a residential tenancy relationship and that the Residential Tenancy Branch does not have jurisdiction for the following reasons:

- In my view the payments made by the respondent to the applicant are better characterized as a payment to maintain the house rather than a rent payment.
- The parties did not agree to the payment of rent.
- The parties did not enter into a written residential tenancy agreement.
- The respondent has not paid a security deposit.

- The respondent has lived in the rental property since he was an infant and has access to the entire rental property.
- The payments made increased in a manner not permitted under the Residential Tenancy Act.
- This is a family dispute where the respondent is claiming an ownership interest in the rental property.

As a result I determined the Residential Tenancy Branch does not have jurisdiction and I declined to hear the matter.

This does not mean the applicant is without a remedy. The applicant should contact a solicitor to assist her in considering her options. Further, if the respondent is threatening the safety of the applicant the police should be called immediately.

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: January 15, 2016

Residential Tenancy Branch

