



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing was scheduled in response to a Tenant's Application for Dispute Resolution to deal "other" issues. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matters

The applicant named two respondents in filing this application. One of the respondents who is deceased, owned the subject property currently occupied by the applicant, and other respondent is the deceased's brother (referred to by initials GH for ease of reference). GH was served with notification of this proceeding by way of registered mail. I did not hear that the estate for the deceased was served.

I asked the parties as to whether GH is the executor of the deceased's estate. GH stated that he has an application before the court and that without a dispute to his application it is most likely he will be named as the executor. The applicant and the person assisting him raised arguments that procedure may not have been followed with respect to GH's application that is currently before the court and that another person may have standing as an executor. GH was of the position proper procedure had been followed.

As the parties were informed during the hearing, an application pertaining to the naming of an executor of an estate is outside my jurisdiction and I must be satisfied that the correct parties have been named on the application before me, and served, in order to proceed. Residential Tenancy Branch Policy Guideline 43 provides the following information, in part, with respect to naming a party that is deceased:

If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

[My emphasis added]

Aside from the issue of the standing of GH as the personal representative of the deceased's estate, both parties made submissions that the Act does not apply. The applicant was of the position that he has a beneficiary interest in the property and his interest in the property is greater than that of a tenant. GH was of the position that the living accommodation is exempt from the application of the Act pursuant to section 4(c) of the Act. Section 4(c) exempts "living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation".

My jurisdiction to resolve disputes is limited to residential tenancy agreements between a landlord and tenant with respect to possession of a rental unit. The Act provides for exclusion of certain living accommodation from the applicability of the Act under section 4. If the living accommodation is exempt under section 4 the Arbitrator will decline jurisdiction to resolve the dispute. Also, where a party has or may have an interest in a property that is greater than the right to occupy the living accommodation as a tenant under a tenancy agreement, an Arbitrator will decline jurisdiction and the parties will have to resolve their dispute in the appropriate forum.

Considering both parties made submissions to me that the Act does not apply to this living accommodation I declined to accept jurisdiction without finding it necessary to determine which position to accept. Accordingly, I did not proceed to hear further arguments from the parties and the hearing was ended.

Conclusion

I have declined to accept jurisdiction to resolve this dispute.

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 15, 2016

Residential Tenancy Branch