



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF; CNC, FF, O

Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- cancelation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord was represented by legal counsel. The parties confirmed receipt of each other's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Preliminary Issue – Jurisdiction

Although neither party provided clear evidence or testimony to indicate when the tenant began residing on the residential property, both parties agreed that at times the tenant resided in one of two rental units on the property and at other times the tenant resided in his recreational vehicle parked on the property. The parties provided conflicting testimony in relation to jurisdiction of this matter.

Landlord

Legal counsel of the landlord contended this matter falls under the *Act* because the landlord named in this application is the registered owner of the rental unit as evidenced by the title certification provided to file, the unit is a residential house that the tenant has occupied for a number of years and as evidenced by the submitted bank records the tenant has paid some “rent” over the years. The bank records dated from 2012 to 2014 show a total of four “rent” payments. Legal counsel does not dispute that there was some discussion surrounding the tenant purchasing the rental unit and that a subsequent contract of sale was drafted. Legal counsel contended that because the sales contract went unsigned by the tenant, the sale was not completed. In summary it is the landlord’s position that the tenant was permitted to reside on the property, the tenant was expected to pay rent, the tenant had an opportunity to purchase the rental unit but failed to take that opportunity and accordingly the Residential Tenancy Branch should rule this relationship as a tenancy.

Legal counsel acknowledged that the tenant conducted work on the rental unit that provides a contractual entitlement to compensation; however, this is a separate matter from the landlord’s application for an order of possession of the rental unit. Legal counsel indicated that the tenant has commenced an action in Provincial Court seeking damages from the landlord for breach of contract relating to an alleged agreement to provide the tenant with financing to renovate the rental property, and to sell the property to the tenant. Legal counsel indicated that the landlord disputes the tenant’s claim and plans to file a reply. Additionally legal counsel indicated that the tenant has filed an application before the Provincial Court to order the landlord to cease its actions under the Residential Tenancy Branch.

Tenant

The tenant argued that this matter does not fall under the *Act* because a tenancy agreement did not and does not exist between the parties; the parties have a purchase agreement. The tenant only filed an application to cancel the 1 Month Notice in the event the Residential Tenancy Branch determined jurisdiction. The tenant explained that initially he was unwilling to purchase the residential property from the landlord for the asking price; however, at some point the relationship evolved and the tenant became interested in purchasing the property. The tenant and landlord entered into a verbal purchase agreement in which the landlord was to finance the repairs/renovations conducted by the tenant and in exchange the landlord would sell the property to the tenant. The tenant provided text messages and emails to substantiate his position that there was a verbal agreement between the parties for the tenant to purchase the residential property. The tenant acknowledged he did not sign the written purchase

agreement due to a punitive clause in the agreement. The tenant acknowledged he has filed for damages and an order related to jurisdiction in Provincial Court.

Analysis

Section 4 of the *Act* excludes certain living arrangements. In particular, section 4(d)(i) of the *Act* provides that living accommodation included with premises that are primarily occupied for business purposes are excluded from the provisions of the *Act*.

The bulk of the testimony and evidence focused on a business arrangement between the parties that appeared to evolve over time. The tenant conducted repairs to the rental units, the landlord could only testify to a handful of “rent” payments over a span of four years, the tenant did not continually live in one of the two rental units on the property and instead lived in his recreational vehicle located on the property. For these reasons, I find it more probable that the tenant’s occupancy was based on a business purpose rather than a tenancy. However, I do not dismiss the parties’ applications on this finding.

Due to the present application before the Provincial Court regarding the jurisdiction of the Residential Tenancy Branch, I decline to hear the parties’ applications.

Conclusion

Based on the present application before the Provincial Court regarding the jurisdiction of the Residential Tenancy Branch, I decline to hear the parties’ applications.

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: July 29, 2016

Residential Tenancy Branch