



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE, MNR, MND, FF; CNC

Introduction

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

- an order of possession because the respondent's employment with the applicant has ended, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the respondent's cross-application pursuant to the *Act* for:

- cancellation of the applicant's 1 Month Notice to End Tenancy for End of Employment, dated May 31, 2017 ("1 Month Notice"), pursuant to section 47.

The applicant, his advocate wife and his lawyer and the "respondent" RB, his husband KS and their articulated student representative attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 87 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing 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.

At the outset of the hearing, I asked both parties to provide verbal submissions on whether I had jurisdiction to hear both applications under the *Act*.

Issue to be Decided

Does the Residential Tenancy Branch (“RTB”) have jurisdiction to consider this application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties’ claims and my findings are set out below.

As per the parties’ written evidence, a main house and cottage are situated on a larger 14.5-acre property that is the site of operations for a company that is involved in turkey farming. The respondent has been living in different houses on the same property for most of his life. Both parties agreed that the respondent began residing at the main house around November 2011. He stated that he began residing at the cottage in summer 2012, while the applicant claimed that it was in spring 2012. The respondent claimed that his husband began living at the cottage with him in 2013. Both parties agreed that respondent and his husband continue to live at the cottage presently.

As per the parties’ written evidence, the applicant is the sole shareholder and only director of the company and resides at the main house with his wife. The respondent claimed that he was formerly a company employee as manager of the turkey farm and resigned from his position around October 2016. The applicant stated that his wife sent a text message to the respondent in November 2016 asking the respondent and his husband to vacate the cottage.

The respondent stated that he filed a human rights complaint against the applicant and served the applicant with notice in March 2017. The applicant stated that he served the respondent and his husband with the 1 Month Notice on June 1, 2017 for them to vacate the property by July 1, 2017 due to the respondent’s end of employment with the applicant’s company. The respondent and his husband disputed the 1 Month Notice. Both parties filed applications at the RTB in order to determine the effect of the 1 Month Notice. The applicant also applied for a monetary order of \$20,000.00 in rental arrears that he says is owed by the respondent and his husband from January 1, 2017 to present for residing at the cottage.

Analysis

The jurisdiction of the *Act*, and in turn my jurisdiction, is set out in section 2 of the *Act*.

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

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

“Tenancy agreement” is defined in section 1 of 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;

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention, no enforceable agreement under the *Act* arises from the relationship. Although there are situations where family agreements can be treated as legally enforceable, for the most part, where families' relationships are concerned, generally the relationship is viewed as non-contractual.

This relationship lacks the indicia of a tenancy agreement. In particular, the main house and cottage on the property have been the family homes for both the applicant and respondent for many years. There is no written tenancy agreement, the respondent and his husband did not pay any rent to the applicant, but rather contributed to the upkeep of the property, while the respondent worked for the family business.

When the respondent resigned from his employment position in October 2016, no formal written notice to end tenancy was served on the respondent, only a text message from the applicant's wife was sent in November 2016. The 1 Month Notice was served to the respondent almost eight months after his employment ended. Between October 2016 and June 2017, no rent was paid by the respondent to the applicant while he continued to live on the property with his husband.

For the above reasons, I find that this is a family dispute. This is not a matter within the jurisdiction of the RTB. Simply because the parties used an RTB form, the 1 Month Notice, does not mean that the *Act* applies to their matter. Accordingly, I decline jurisdiction over both parties' applications.

Conclusion

I decline jurisdiction over both parties' applications.

I make no determination on the merits of both applications. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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: August 10, 2017

Residential Tenancy Branch