



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET and FF

Introduction

This hearing was scheduled in response to an Application for Dispute Resolution in which the Applicant applied to end the tenancy early, for an Order of Possession, and to recover the fee for filing this Application for Dispute Resolution.

The Applicant stated that on February 05, 2018 the Application for Dispute Resolution, the Notice of Hearing, and 58 pages of evidence that were submitted to the Residential Tenancy Branch were sent to the Respondents, via registered mail. The Respondents acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On February 23, 2018 the Respondents submitted 4 pages of evidence to the Residential Tenancy Branch. The Respondent stated that this evidence was served to the Applicant, via registered mail, in February of 2018. The Respondent acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed. The testimony and documentary evidence is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

Do I have jurisdiction in this matter and if, so, is the Applicant entitled to an Order of Possession?

Preliminary Matter #1

The Applicant and the Respondents agree that owner of these premises is deceased.

Legal Counsel for the Applicant stated that the owner of the premises died on October 11, 2017, without a will.

Legal Counsel for the Applicant stated that the Applicant has applied for a Letter of Administration with No Wills attached, and that she was granted a Letter of Administration on February 16, 2018. A copy of the Letter of Administration was not submitted in evidence.

The Respondents do not dispute the submission that the Applicant was granted a Letter of Administration.

Section 1 of the *Residential Tenancy Act (Act)* defines a landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

On the basis of the undisputed evidence provided by Legal Counsel for the Applicant, I find that the Applicant was granted a Letter of Administration on February 16, 2018 which authorizes her to act on behalf of the owner of the property that is the subject of this dispute. I therefore find that she is the landlord, as that term is defined by section 1 of the *Act*.

Preliminary Matter #2

The Respondents argued that the Application for Dispute Resolution was filed prematurely as the Applicant did not have legal authority to act on behalf of the owner when she filed this Application on February 01, 2018.

Legal Counsel for the Applicant argued that the Applicant had the common law right to act on behalf of the Estate of the Deceased and, therefore, to file the Application for Dispute Resolution. He stated that the Deceased has no spouse or common law partner; that his mother has consented to the Applicant acting on her behalf; that the Applicant is the Deceased's sole surviving sibling; and that the Applicant has the common law authority to act on behalf of the estate of the Deceased.

Legal Counsel for the Applicant argued that it would significantly disadvantage the Applicant if it was determined that this Application for Dispute Resolution was dismissed because it was filed prematurely. He argued that the delay associated to filing another Application for Dispute Resolution would be very expensive for the estate of the Deceased, as the Strata Corporation of the premises is fining the estate \$500.00 for every week the Respondents live on the premises. The Applicant submitted documentary evidence that corroborates this submission.

The Respondents did not provide any reasons to suggest they would be unduly disadvantaged by a decision that would allow these proceedings to continue even though the Application for Dispute Resolution was filed prior to the Applicant obtaining a Letter of Administration.

Legal Counsel for the Applicant and the Respondents agree that they communicated with the Applicant regarding these premises after the owner passed away.

As the courts have granted the Applicant a Letter of Administration, I find that there can be no doubt that she has the authority to file an Application for Dispute Resolution in regards to these premises. To dismiss this Application for Dispute Resolution would, in my view, have no reasonable effect on the outcome of the dispute as the Applicant would simply file another Application for Dispute Resolution.

I find that allowing this Application for Dispute Resolution to proceed even though it was filed prior to the Applicant being granted a Letter of Administration is neither a breach of procedural fairness nor a breach of the principles of natural justice. The Applicants knew the issues being considered at the hearing and their ability to respond to those issues are not impacted by the fact the Applicant had not been recognized by the Courts as a representative of the estate at the time of filing.

For these reasons I will consider the Application for Dispute Resolution filed by the Applicant.

In determining that this matter should proceed I was heavily influenced by the fact the Respondents submitted no arguments that suggest they would be unduly prejudiced by the hearing proceeding.

Conversely, the evidence submitted by the Applicant indicates that a delay of any sort will have a significant impact on the estate of the Deceased, as the estate is subject to weekly fines of \$500.00 if the Respondents continue to live in the rental unit.

Preliminary Matter #3

Residential Tenancy Branch policy guideline #43 suggests, in part, that the proper naming the estate of a deceased party is: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

I have amended the Application for Dispute Resolution to reflect the name of the estate of the deceased party, as outlined by the aforementioned policy guideline.

Background and Evidence

The Applicant and the Respondents agree that the Respondents were living in the premises with the owner of the premises prior to his death.

The Respondent stated that the owner of the premises kept the kitchen in very poor condition and that due to the condition of the kitchen he did not use it for any reason. He stated that he typically only stayed in the premises for four nights each week and on those days he either ate restaurant food in his room or he dined away from the premises.

The Respondent #2 stated that he ate in the kitchen and he stored food in the refrigerator. He stated that he never saw the Respondent in the kitchen.

The Respondent stated that when he moved into these premises the owner told him that the bathroom near his bedroom was for the exclusive use of "tenants" living in the premises, although the owner did not tell him the owner would never use this bathroom. He stated that the owner typically used other bathrooms in the residential complex; that the owner used the bathroom beside the Respondent's bedroom approximately once a week; and that the owner was asked not to use this bathroom due to the condition the owner left it in.

The Respondent #2 stated that he typically used the bathroom near his bedroom, which is the same bathroom used by the Respondent. He stated that the owner of the premises used this bathroom on a regular basis.

Legal Counsel for the Applicant argued that accommodations were provided to both Respondents with the understanding that they would share the kitchen with the owner of the premises. He submits that it is irrelevant that one of the Respondents opted not to use the kitchen.

In the written submission the Respondents ask that even if the Respondents did at one point share the kitchen or bathroom with the owner of the premises, is that point moot now that the owner has died and the Respondents continue to live in the premises. It appears that the Respondents are arguing that the *Act* now applies to their living arrangement as they are no longer sharing a kitchen or a bathroom with the deceased owner.

Analysis

Before considering the merits of the Application for Dispute Resolution I must determine whether this application has jurisdiction under the *Act*. The legislation does not confer authority to consider disputes between all types of residential accommodations.

Section 4(c) of the *Act* stipulates that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

On the basis of the undisputed I find that the owner of the premises used a bathroom that was also used by both Respondents. Although this was not the bathroom primarily used by the owner, I find that the owner used it enough for me to conclude that he was sharing it with the Respondents.

I therefore find that the *Act* does not apply to the living arrangement between the owner and the Respondents and that I do not have jurisdiction over this matter.

In determining that I do not have jurisdiction in this matter I considered the Respondents' submission that the owner has died and the Respondents are no longer sharing a kitchen or a bathroom with the Deceased.

The Act defines a tenancy agreement as 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.

Residential Tenancy Branch policy guideline #9 defines a licence to occupy as a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

As the *Act* did not apply when the Deceased permitted the Respondents to live in the premises, I find that the Deceased could have revoked permission to live in the rental unit at any time. As the Deceased could have revoked permission to live in the rental unit at any time, I find that the Respondents were living in the premises under the terms of a licence to occupy.

As the Respondents have been living in the premises under the terms of a licence to occupy and the Applicant very clearly does not wish them to continue to occupy the premises, I cannot conclude that the Respondents and the Applicant have entered into a tenancy agreement. As these parties have not entered into a tenancy agreement, I find that the Act does not currently apply to these living arrangements.

Conclusion

The Application for Dispute Resolution is dismissed, as I do not have jurisdiction over this matter.

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: March 14, 2018

Residential Tenancy Branch