



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, LAT, RPP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Applicants under the *Residential Tenancy Act* (the “Act”) seeking an Order of Possession, an order allowing the Applicants to change the locks, an order for the Respondent to return personal possessions, and recovery of the filing fee. The Applicants also filed an Amendment to the Dispute Resolution Application (the “Amendment”) correcting incorrect contact information for the Respondent.

The hearing was convened by telephone conference call and was attended by the Applicant S.H., who is not an occupant of the property in question. S.H. testified that she holds power of attorney for the Applicant A.G., who is the occupant of the property. Based on the above, I find that S.H. is an agent for the Applicant and will therefore be referred to as the “Agent” throughout this decision. The other Applicant, A.G., will be referred to as the Occupant. The hearing was also attended by the Respondent, who is the owner of the property. Both parties provided affirmed testimony and neither party raised any concerns about the service of the Application, Notice of Hearing, or documentary evidence.

At the outset of the hearing the Respondent stated that they are not a Landlord under the *Act* and that there is no tenancy in place. The Respondent testified that they purchased the condo in which their grandmother, who is the Occupant, lives, approximately 15 years ago so that she did not need to go into a residential care facility. The Respondent stated that since that time, she has resided in the 2 bedroom, 1 bathroom condo with the Occupant between 1-4 days per week to assist her with daily living activities. The Respondent stated that although the Occupant contributes towards some of the household expenses such as housekeeping, strata fees, and insurance, she does not pay rent.

The Agent disputed the testimony provided by the Respondent and testified that although there is no written tenancy agreement in place, there was an oral agreement for the Occupant to pay rent. The Agent testified that the Occupant paid all the utilities,

which are in her name, and that she receives a subsidy for rent. Copies of the utility bills were not submitted for my consideration. The Agent testified that although she resides in another area of the province, she spoke with the Occupant daily and therefore knows that the Respondent does not reside in the condo. Further to this, the Agent testified that both she and her husband visited the Occupant on several occasions this past fall for several weeks at a time, during which the Respondent did not reside in the condo.

In response to the Agent's testimony, the Respondent stated that the reason she did not reside in the condo during the visits from the Agent and her husband was because it is only a 2 bedroom condo and there was neither room nor a need for her to live in the condo during that time as either the Agent or her husband were there with the Occupant to look after her needs.

Based on the above, I find that I must determine whether I have the jurisdiction to hear this matter under the *Act* prior to considering the merits of the Application. Section 4(c) of the *Act* states that where a tenant shares bathroom or kitchen facilities with the owner of that accommodation, the *Act* does not apply.

Although the parties agreed that the Respondent owns the property and that the Occupant does not have an ownership interest in the property, they disagreed about whether the owner, who is the Respondent, shares kitchen or bathroom facilities with the Occupant. The documentary evidence before me from the Agent contains only the Application, the Amendment, a receipt for the payment of the filing fee and two word documents asserting to contain copies of text messages and cheques. However, copies of the text messages and the cheques were not present in the documentary evidence. Although the Agent also testified that she holds power of attorney for the Occupant, no documentary evidence was submitted to corroborate this testimony. As a result, I find that I am left only with opposing affirmed testimony of the parties in order to determine whether this is a matter over which I have jurisdiction.

Section 6.6 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim, who in this case, is the Agent. The Respondent testified that she is the owner of the property and has resided in the property with the occupant 1-4 days per weeks for the last 15 years, and in so doing, shared a kitchen and bathroom with the occupant. Although the Agent refuted this testimony, she did not provide any documentary evidence in support of her testimony that there is a tenancy in place and that the owner does not share kitchen or bathroom facilities with the Occupant. Further to this, she

acknowledged that she lives in another area of the province and I therefore do not find it reasonable to conclude that she knows with any degree of certainty who is or is not residing in the property at any given time.

Based on the above, I find that the Agent has not discharged their onus in relation to this matter and I find the testimony of the Respondent more reliable. As a result, I find that I do not have the jurisdiction to hear this matter pursuant to section 4(c) of the *Act* and I therefore decline to hear this matter for lack of jurisdiction. I encourage the parties to seek independent legal advice in relation to 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 16, 2018

Residential Tenancy Branch