



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FFT

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Applicants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), an order for the Landlord to comply with the Act, regulation, or tenancy agreement, an order suspending or setting conditions on the Landlord’s right to enter the rental unit, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by Respondents, who both attended the hearing on time and ready to proceed. The Applicants did not attend. Both Respondents provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As the Respondents attended on time and ready to proceed, the hearing commenced as scheduled despite the absence of the Applicants.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision. At the request of the Respondents, copies of the decision will be mailed to them at their address listed on the Application.

At the outset of the hearing, the Respondents stated that this is not Residential Tenancy Branch (the “Branch”) matter as the Applicants are occupants and not tenants. Based

on the above, I find that I must first determine whether I have the jurisdiction to hear these matters under the *Act* prior to considering the merits of the Application itself. Section 1 of 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. Section 1 of the *Act* defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (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;

Policy Guideline # 27 states that the Legislation does not confer upon the Branch the authority to hear all disputes regarding every type of relationship between two or more parties and that the Branch only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations.

The Respondents testified that the property is a single family home, which they themselves rent in its entirety from the owner. In support of their testimony they submitted a tenancy agreement between them and the person they state is the owner of the property. The Respondents stated that they are the only tenants of the property under the *Act*, and that although they signed a tenancy agreement with the Applicants, they are not the owners of the property or the owner's agents and that they do not permit the occupation of the property by the Applicants on behalf of the owner. As a result, the Respondents argued that the Applicants are in fact occupants, not tenants, and therefore the *Act* does not apply. The Applicants did not attend the hearing to provide any evidence of testimony for my consideration.

Based on the undisputed and affirmed testimony of the Respondents and the documentary evidence before me from them for my consideration, I have concerns about whether this is a tenancy over which I have jurisdiction. As a result, I decline to hear this matter for lack of jurisdiction. Further to this, I note that the Applicants did not appear at the hearing of their own Application to provide any evidence or testimony for my consideration. As a result, I decline to grant recovery of the filing fee.

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: May 18, 2018

Residential Tenancy Branch