



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** CNL, FF

### **Introduction**

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) to cancel a notice to end tenancy for landlord's use of property. The applicant also applied for the recovery of the filing fee. The applicant, the respondent and their agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The respondent stated that the notice of hearing was never received at the respondent's service address but an evidence package was received about 10 days ago which did not provide the respondent with sufficient time for a rebuttal. The applicant testified that the notice of hearing was served to the respondent's service address and was returned. The applicant quoted an incorrect unit number. It is possible that the respondent did not receive the notice of hearing due to a mistake in the address. However the respondent agreed that he received the evidence package of the applicant. .

On May 11, 2018 the respondent served the applicant with a notice to end tenancy for landlord's use of property. The applicant disputed the notice in a timely manner. The parties agreed that they had attended a hearing on November 07, 2017 to resolve a dispute regarding a notice to end tenancy for non-payment of rent. The applicant filed a copy of the decision dated November 16, 2017. During that hearing on November 07, 2017, the parties were given full opportunity to testify and based on their testimony and on a balance of probabilities; the Arbitrator concluded that that dispute did not fall within the jurisdiction of the Residential Tenancy Branch.

### **Issues to be decided**

Does this matter fall within the jurisdiction of the Residential Tenancy Branch? If so has the respondent issued a notice to end tenancy for respondent's use of property in good faith? Is the applicant's application *res judicata*?

### **Background and Evidence**

The parties testified regarding the relationship between the respondent and the applicant. The applicant stated that the female respondent is her sister and the two of them along with a third sister and other family members invested in a parcel of land with the intention of building a home for sale. The applicant stated that sometime during the construction project, the third sister opted out and was paid her share.

Upon completion of the home in 2006, it was listed for sale but a buyer was not found. The applicant moved in along with her parents and paid utilities, property taxes and part of the mortgage. The amounts paid to the respondent varied. There is no written agreement to support the terms of the arrangement.

The applicant was very firm that she had financial interests in the property but did not have any documents to support her testimony. The applicant stated that approximately four months ago, the male respondent visited the applicant and they had a discussion regarding their situation. The applicant stated that the male respondent offered her \$100,000 to move out. The respondent agreed that he had visited the rental unit but stated that it was for the purpose of maintenance and denied having made any such offer to the applicant.

The applicant stated that the respondent has served this second notice in bad faith because the first one served in November 2017 was unresolved in the previous hearing. The reason given by the Arbitrator was that he lacked jurisdiction in the matter. The respondent stated that his 23 year old son intended to move into the rental unit which was the reason for the notice.

The respondent testified that the applicant has no financial interest in the unit and that she has not paid rent for over a year. The applicant agreed that she is not named on the land title or the mortgage of the unit.

### **Analysis**

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Based on the documents filed into evidence and the testimony of both parties, I find that the issue of jurisdiction has been addressed in a prior hearing. Even though this hearing deals with a different notice to end tenancy, I must first establish jurisdiction before I address the notice to end tenancy.

Based on the general testimony of both parties and in particular the testimony regarding payments the applicant makes towards utilities and property taxes, I find that It is more likely than not that the applicant has a financial interest in the property and that the payments made do not count as rent. Neither party provided sufficient testimony for me to conclude that this arrangement is a landlord tenant relationship and as such falls outside of the jurisdiction of the *Act*.

Based on the affirmed testimony of both parties, and on a balance of probabilities, I find that I agree with the prior decision dated November 16, 2017 and accordingly, I find that I do not have jurisdiction to hear this matter.

### **Conclusion**

I decline to proceed due to a lack of 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: July 18, 2018

---

Residential Tenancy Branch