



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing was scheduled in response to the applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72.

The applicants (collectively "the applicant") and respondent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue - Jurisdiction

The issue of jurisdiction was raised after review of the respondent's submission which explicitly shows he was part owner of the unit.

I advised the parties that this hearing would address the matter of jurisdiction only and that if jurisdiction was found; each party would receive an interim decision and a notice of reconvened hearing. If jurisdiction was not found then a final decision would be issued dismissing the application.

Issue(s) to be Decided

Does the matter fall under the jurisdiction of the *Act*?

Background and Evidence

The unit originally belonged to the applicant's mother, who vacated the unit approximately four years ago. The unit is contained in a building under strata bylaws that restrict rentals. The respondent moved into the unit on or about October 2, 2016 and became a registered owner of the unit on November 9, 2016. The parties did not enter into a written tenancy agreement rather, on an undisclosed date the parties entered into a bare trust agreement. The respondent did not pay a security deposit. On the first of each month, the respondent electronically transferred a set amount of funds to the applicant.

On October 2, 2018, the respondent signed documents relinquishing his ownership to the applicant and vacated the unit on October 7, 2018.

Applicants Submission

The applicant explained that because he was unsuccessful in selling the unit after his mother's vacancy, and strata did not allow rentals, he sold a 1% share to a family friend. This family friend occupied the unit and paid a set amount of funds to the applicant each month. This agreement eventually came to an end. It is at this time that the 1% share was transferred from the family friend to the respondent. The landlord testified that the 1% ownership is simply a "loophole" they used to allow a rental in a non-rental building.

At the conclusion of the hearing, the landlord testified that this matter was brought before the Civil Resolution Tribunal ("CRT") but was denied on the basis of jurisdiction.

Respondents Submission

It is the respondent's position that the application should be dismissed on the grounds that the parties did not enter into a written or oral tenancy agreement in relation to the unit. The respondent contends that the "living arrangement" as he refers to it, was entered into in lieu of entering into a tenancy agreement.

Analysis

Under the *Act*, a tenancy is defined as a tenant's right to possession of a rental unit under a tenancy agreement. Tenancy agreement is defined 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.

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. In this case, the parties agree that a transfer of ownership, albeit a small one but nonetheless a transfer of ownership occurred. Based on the documentary evidence and testimony of the parties, I find that the respondent had an interest in the property which exceeds the basic right to possession under a tenancy agreement. Accordingly, I find that the *Act* does not apply to the agreement between the parties and therefore decline jurisdiction over this matter.

In regards to the finding by CRT, I am not bound by that decision and encourage the parties to seek independent legal advice.

Conclusion

I dismiss the application as I have no jurisdiction to render a decision in 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: October 05, 2018

Residential Tenancy Branch