



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with the Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72.

The applicant, the respondents and an agent for the respondents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The Applicant stated that they are representing the interests of both applicants.

The agent for the respondents acknowledged service of the notice of this hearing but submitted that they did not receive any evidence from the applicant.

The applicant submitted that the respondents are the applicant's parents and that they all live in the same house, sharing a kitchen and bathrooms. The applicant further submitted that there is a civil claim with the Supreme Court of British Columbia regarding the applicant's part ownership of the residential premises in dispute, where the applicants and the respondents currently reside.

The agent for the respondents confirmed that there is currently a court proceeding in process between all of the named parties regarding the applicant's part ownership of the house.

Analysis

Section 2 (1) of the *Act* establishes that the *Act* applies to tenancy agreements, rental units and other residential property.

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.

Based on the affirmed testimony of both parties, I find that it is undisputed that there is an active Supreme Court proceeding between the parties regarding whether the applicant has part ownership of the residential premises in dispute.

For this reason I find that I do not have jurisdiction under the *Act* to hear this matter.

As I have found that I do not have jurisdiction under the *Act* in this matter, I decline to award the filing fee for this Application.

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

If the Supreme Courts determines ownership in favour of the respondents, the matter of whether the applicants and the respondents are sharing the kitchen and the bath would then determine whether the *Act* has jurisdiction regarding the agreement between the named parties.

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: November 05, 2018

Residential Tenancy Branch