



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OT FFT

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the respondent pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. Both parties testified that they had been served with the other's materials. Based on the testimonies I find all documents were served in accordance with sections 88 and 89 of the Act.

Preliminary Issue- Jurisdiction

At the start of the hearing the parties raised the issue of whether this is a tenancy to which the *Residential Tenancy Act* applies.

The parties agreed on the following facts. The applicants are the parents of the respondent. The applicants have been residing in the subject property for approximately 12 years. In September 2017, the subject property was transferred to the respondent while the applicants continued to reside in the property. The parties did not enter into an agreement where the applicants would pay rent to the respondent. The parties did agree that the applicants would continue to pay all utilities and the property taxes for the property. The respondent works throughout the province and does not reside in the subject property but stays there on occasions when they come to town.

Analysis

The Residential Tenancy 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 license to occupy a rental unit

I find that there is no evidence that a tenancy agreement exists between the parties. The applicants are not obligated to pay any rent for occupying the building. While the parties agree that the applicants pay the utilities and the property taxes for the property I find that this is not consideration for residing in the building but rather an arrangement made between family members. No landlord tenant relationship exists between the parties that would give rise to obligations on either part under the *Act*.

Consequently, as I find there is no tenancy in place I find I have no jurisdiction to consider the present application.

Conclusion

I find that I do not have jurisdiction in this matter and I decline to make a finding on the merits of the application.

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: February 7, 2019

Residential Tenancy Branch