



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0746199 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, OPT, LRE, OLC/ OPR, MNRL

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62; and
- an Order of Possession for the rental unit, pursuant to section 54.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55; and
- a Monetary Order for unpaid rent, pursuant to section 67.

The property manager testified that the tenant was served with the landlord's application for dispute resolution via registered mail on June 4, 2019. The Canada Post tracking number was provided to confirm this registered mailing. I find that the tenant was served with the landlord's application in accordance with section 89 of the *Act*.

Preliminary Issue- Tenant's Attendance

The tenant did not attend this hearing, although I left the teleconference hearing connection open for 11 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's property manager and the owner of the landlord company attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's property manager and the owner of the landlord company and I were the only ones who had called into this teleconference.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 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.

Based on the above, **in the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.**

Preliminary Issue- Jurisdiction

Section 2 of the *Residential Tenancy Act* provides that the Act applies to tenancy agreements, rental units and other residential property although there are exempt living accommodations under section 4 of the Act.

Residential Tenancy Policy Guideline 27: *Jurisdiction* provides information and policy statements with respect to living arrangements and/or agreements that may or may not fall under the Act, including the following section on page 5:

2. TRANSFERRING OWNERSHIP

A tenancy agreement transfers a landlord's possessory rights to a tenant. It does not transfer an ownership interest. If a dispute is over the transfer of ownership, the director does not have jurisdiction. In deciding whether an agreement transfers an ownership interest, an arbitrator may consider whether:

- money exchanged was rent or was applied to a purchase price;
- the agreement transferred an interest higher than the right to possession;

- there was a right to purchase in a tenancy agreement and whether it was exercised.

The property manager and the owner testified to the following facts. The tenant's boyfriend moved into the subject rental property approximately five years ago and the tenant moved in with him a few months later. The tenant's boyfriend and the landlord had a verbal agreement that the tenant's boyfriend was going to put a down payment on the subject rental property and would then continue to pay rent on a rent to own basis. The tenant's boyfriend gave the landlord a \$30,000.00 deposit for the subject rental property; however, the tenant's boyfriend died sometime in 2016. The landlord retained the deposit after the tenant's boyfriend's death. A rent to own or purchase agreement were never signed by the landlord and the tenant's boyfriend.

The property manager and the owner testified to the following facts. The tenant continued to pay \$3,000.00 per month in rent up until May 2018. The tenant has not paid any rent from June 2018 to the present date.

As provided in the policy guideline section provided above, I consider the \$30,000.00 down payment made by the tenant's boyfriend and subsequent rental payments to be a payment toward the purchase of the property. Based on the testimony of the property manager and the owner of the landlord company the tenant and her boyfriend may have met the definition of spouse in the *Family Relations Act*. This may result in a finding that the tenant is a beneficial owner although I do not make such a finding as it is beyond my jurisdiction and that finding would have to be made in the appropriate jurisdiction.

Accordingly, I am of the view that the tenant may have a beneficial interest in the property and that the agreement between her and the landlord is more than a mere transfer of the right to use and occupy the property that is conveyed to a tenant under a tenancy agreement.

Considering the above, I find the owner cannot terminate the interest of a beneficial owner by way of Notice to End Tenancy that is used to end a tenancy under the *Residential Tenancy Act* since a beneficial owner holds an interest in the property that is greater than that of a tenant only. Rather, the owner must seek remedy in the appropriate forum. Similarly, the tenant's rights, if any, with respect to spousal property and residency must be decided in the appropriate forum.

In light of the above, I find the Act does not apply to the agreement between the landlord and the tenant regarding this property. Therefore, I decline to accept jurisdiction and I do not issue an order of Possession to the landlord.

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: June 25, 2019

Residential Tenancy Branch