



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for unpaid rent and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord represented himself. The tenant was accompanied by legal counsel and an interpreter.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Upon consideration of the documentary evidence, a preliminary issue was raised and repeated at the hearing. The tenant was of the position that I did not have jurisdiction to resolve this dispute.

Issues to be decided

Does the *Residential Tenancy Act* apply to the parties and do I have jurisdiction to resolve this dispute? Is the relationship between the two parties that of a landlord and tenant? If so, does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue?

Background and Evidence

The applicant and the respondent are mother and son. The property in dispute was the family home that was occupied by the applicant and her spouse from 1981. The applicant's spouse passed away in 2017 and the 82 year old applicant continues to occupy the property. There is no written tenancy agreement.

The respondent submitted that for financial reasons, in 2004, the owner of the property (the now deceased spouse of the applicant) sold the property to a third party. In 2010 the respondent purchased the property from this third party. The respondent stated that the applicant continued to occupy the property and paid rent to the third party for the period that he owned the property and then to the respondent after the respondent purchased the property in 2010. The respondent testified that the applicant paid a lump sum of \$10,000.00 once in 2010 that comprised of rent for five months. The applicant maintained that she has never paid any rent to her son and has paid for house insurance, roof repair and other maintenance of the property. The applicant agreed that a lump sum of \$10,000.00 was paid to the respondent but it was not related to rent.

On April 12, 2019 the applicant filed a petition in the supreme court of Canada and sent a notice of civil claim to the respondent. The notice states that the respondent holds property and cash in trust for the estate of the deceased spouse of the applicant. The relief sought by the applicant includes an order under the *Wills, Estate and Succession Act*, for adequate, just and equitable provision from the estate of the deceased in favour of the applicant. A copy of the notice of civil claim was filed into evidence. The applicant confirmed that the property currently has a certificate of pending litigation registered against it.

Analysis

Section 27 of *Residential Tenancy Policy Guideline* addresses the jurisdiction of the *Residential Tenancy Act*. This section states that if a dispute is linked substantially to a Supreme Court action, then the arbitrator may decline jurisdiction. Based on the sworn testimony of both parties and the documentary evidence filed by both parties, I find that the property in question is the matter of an ongoing claim currently in litigation.

One possible outcome of the Supreme Court claim is that the relationship between the parties was never one of landlord and tenant. Accordingly, until that underlying issue is resolved, it would be inappropriate for any other decisions to be made under the authority of the Residential Tenancy Act.

Based upon the above, I find that this claim is a dispute linked substantially to a matter that is before the Supreme Court, and that jurisdiction lies with the court. Pursuant to section 58(2)(c) of the *Act*, the Residential Tenancy Branch director, and I as the director's delegate, have no authority to determine this dispute.

Conclusion

I find that the *Residential Tenancy Act* does not apply to this dispute and I decline 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: August 12, 2019

Residential Tenancy Branch