



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABBOTSFORD CO-OP HOUSING ASSOCIATION and
[applicant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

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

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant (who applied as a "tenant" in this application) did not attend this hearing, which lasted approximately 20 minutes. The applicant's agent, the landlord's agent ("landlord"), and the landlord's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he was the manager of the landlord named in this application and that he had permission to speak on its behalf at this hearing. The landlord confirmed that his lawyer had permission to speak on behalf of the landlord. The applicant's agent confirmed that he had permission to represent the applicant at this hearing.

The landlord's lawyer confirmed receipt of the applicant's application for dispute resolution hearing package and the applicant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the applicant's application and the applicant was duly served with the landlord's evidence.

At the outset of the hearing, I asked both parties to provide verbal submissions on whether I had jurisdiction to hear the applicant's application under the *Act*, as the landlord's lawyer raised the issue at the hearing and in the landlord's written evidence.

Issue to be Decided

Does the RTB have jurisdiction to consider the applicant's application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the applicant's claims and my findings are set out below.

The landlord's lawyer stated the following facts. The RTB has no jurisdiction to hear the applicant's application. The landlord is a not-for-profit housing cooperative. The applicant's father, who is a tenant with a valid tenancy agreement with the landlord, is a member of the cooperative. Therefore, that tenancy is excluded by section 4(a) of the *Act*. The applicant is living at the rental unit at the permission of his father, since his father moved out, but the applicant has no other right to be there. The landlord sent a letter, dated February 7, 2007, to the applicant's father, stating that the applicant was not a member of the cooperative and had to submit a membership application. The applicant submitted a membership application to the cooperative, but it is still under review by the Board. The applicant does not have a legal relationship with the landlord, as he is not a member, the only relationship with the landlord is through the applicant's father, who is a member of the cooperative.

The applicant's agent stated the following facts. The RTB has jurisdiction over this application. The landlord is a not-for-profit housing cooperative. The applicant lives in the rental unit and has continued the tenancy from his father. The applicant is not a member of the cooperative. The applicant is a tenant and has a legal relationship with the landlord. The landlord's letter from 2007 indicates that the applicant is permitted to stay in the rental unit after his father leaves.

Analysis

I must decide jurisdiction with respect to the rental unit in question, as both parties dispute whether a tenancy was created and whether this tenancy is excluded by section 4(a) of the *Act*.

Section 4(a) of the *Act* states the following:

This Act does not apply to

(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative.

The jurisdiction of the *Act*, and in turn my jurisdiction, is set out in section 2 of the *Act*. Section 2(1) of the *Act* sets out that:

2 (1) Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

“Tenancy agreement” is defined in section 1 of the *Act* (my emphasis added):

*"tenancy agreement" means 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...*

“Landlord” is defined, in part, in section 1 of the *Act* (my emphasis added):

"landlord", in relation to a rental unit, includes any of the following:

***(a) the owner of the rental unit,** the owner's agent or another person who, on behalf of the landlord,*

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

Section 6, in part, indicates that the *Act* is enforceable between a landlord and tenant (my emphasis added):

*6 (1) The rights, obligations and prohibitions established under this Act are enforceable **between a landlord and tenant under a tenancy agreement.***

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention, no enforceable agreement under the *Act* arises from the relationship.

It is undisputed that the landlord, which is a not-for-profit housing cooperative, is the owner of the rental unit. It is also undisputed that only the applicant's father, not the applicant, signed a tenancy agreement with the landlord. Both parties agreed that the applicant's father was a member of the landlord's housing cooperative. Therefore, I find that the tenancy, which is between the applicant's father and the landlord, is excluded by section 4(a) of the *Act*, as the rental unit is living accommodation rented by a not-for-profit housing cooperative (the landlord) to a member of the cooperative (the applicant's father).

The applicant's father no longer lives at the rental unit. The applicant now resides there. The landlord's letter, dated February 7, 2007, referenced by both parties, indicates that the applicant lives at the cooperative, and is allowed to remain there if his father leaves, but is not a member of the cooperative, and the membership would not be transferred to him from his father. The letter informs the applicant that he would have to move to another unit in the cooperative once it becomes available, so the applicant could be compliant with the cooperative's bylaws.

The letter refers to a membership application being sent to the applicant to complete for approval by the Board. The landlord's lawyer confirmed that the applicant's application is still under review with the Board. Therefore, I find that the only valid tenancy that has been created is between the applicant's father and the landlord, which is excluded by section 4(a) of the *Act*.

I find that no other legal relationship has been created between the applicant and the landlord, as the applicant has not signed a tenancy agreement with the landlord, nor has his membership application been approved by the landlord. Accordingly, I find that the RTB does not have jurisdiction to deal with the applicant's application, as he is not a

proper tenant with a valid tenancy agreement with the landlord and therefore, no valid tenancy has been created under sections 1, 2 and 6 of the *Act*, referenced above.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the applicant's application.

During the hearing, I verbally informed both parties of my decision. Both parties confirmed their understanding of same, and indicated they had no questions.

Conclusion

I decline jurisdiction over the applicant's application.

I make no determination on the merits of the applicant's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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 28, 2019

Residential Tenancy Branch