



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Applicant, who purports to be the landlord, under the *Residential Tenancy Act* (the “Act”), seeking:

- An Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant, their advocate (the “Advocate”) and another person from the advocacy agency, as well as the Respondent, all of whom provided affirmed testimony. The Respondent acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, notice of the hearing, and the Applicant’s documentary evidence and raised no concerns regarding the service or acceptance of this evidence. As a result, I find that the Respondent was served in accordance with the *Act* and I accept the Applicant’s documentary evidence for consideration. Although the Respondent submitted documentary evidence to the Residential Tenancy Branch (the “Branch”) for review in this matter, they acknowledged that their documentary evidence was not served on the Applicant as the result of a no-contact order. However, the Applicant disputed that the no contact order prevented the Respondent from serving them their documentary evidence. Neither party submitted a copy of the no-contact order for my review.

The ability to know the case against you and submit evidence and testimony in your defense is fundamental to the dispute resolution process. As the Respondent acknowledged that their documentary evidence was not served on the Applicant, I find that it would be a breach of both the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) and the principles of natural justice, to accept this documentary evidence for consideration, as the Applicant has not had an opportunity to review it or prepare a response. As a result, I have excluded the Respondent’s documentary evidence from consideration in this matter.

The parties disputed whether a tenancy under the *Act* exists and therefore whether the Branch has jurisdiction to hear and decide this matter. The Applicant stated that the Respondent is a tenant under the *Act*, and that a residential tenancy has been in place since approximately 2004. The Applicant stated that although no written tenancy agreement exists, the Applicant is to pay rent in the amount of \$800.00 per month, which is due on the first day of each month. The Applicant also acknowledged that no security or pet damage deposits were collected. Although the Applicant stated that they have rent receipts proving that a tenancy exists, copies of these rent receipts were not provided for my review and consideration. A copy of the One Month Notice upon which the Application is predicated was also not submitted for my review.

The Respondent denied that they are a tenant under the *Act* and stated that they and the Applicant have been in a common-law relationship since 2002. The Respondent stated that they have personally put over \$100,000.00 into the “cabin” or “man-cave” that the Applicant is referring to as a rental unit and that this structure is not even approved by the municipality for occupation by a tenant. Further to this, the Respondent stated that they have retained a lawyer as they and the Applicant are going through a separation, and that the division of assets, such as the property and the dwellings located on the property, have yet to be ruled on by the court. Although the Respondent stated that the matter of their separation and the division of assets is either before, or soon to be before, the BC Supreme Court, no documentary evidence showing that a matter relating to property ownership or the division of assets has been filed in BC Supreme Court was submitted for my review and the Applicant and their Advocate denied any knowledge of the matter being filed in court.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that the onus is on the Applicant to satisfy me that the Branch has jurisdiction in this matter as they have sought remedy under the *Act* with the Branch. Although the Applicant argued that a residential tenancy under the *Act* exists, the Respondent disputed this testimony stating that they are the Applicant’s common-law partner. Based on the above, and as the Applicant did not submit any documentary evidence in support of their testimony that a tenancy under the *Act* exists, I am not satisfied that a residential tenancy under the *Act* exists. Further to this, the Respondent argued that they are the Applicant’s common law partner and that that they may have an ownership interest in the property as part of an ongoing family law matter.

Only the BC Supreme Court has the jurisdiction to decide matters in relation to an ownership interest in property. As a result of the Respondents arguments that they may have an ownership interest in the property, their testimony that the matter is currently or soon to be before the BC Supreme Court, and my lack of satisfaction that a tenancy under the *Act* exists, I therefore decline to hear and decide this matter for lack of jurisdiction and I encourage the parties to seek independent legal advice in relation to this matter.

The Applicant remains at liberty to re-apply if they have documentary evidence to establish that a tenancy under the *Act* exists or once any substantially linked matter before the BC Supreme Court has been resolved.

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 29, 2020

Residential Tenancy Branch