



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OL

Introduction

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

- an order that the *Act* does not apply to this tenancy, pursuant to section 62.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord, the landlord's lawyer, and the landlord's English language translator 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 her translator had permission to assist her at this hearing. The landlord confirmed that her lawyer had permission to speak on her behalf at this hearing.

The landlord's lawyer stated that the tenant was served with the landlord's application for dispute resolution hearing package on November 13, 2020, by registered mail to the rental unit where the tenant is still residing. The landlord's lawyer provided a Canada Post tracking number verbally during the hearing. He claimed that the application was delivered to the tenant on November 17, 2020. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 18, 2020, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to remove the landlord's lawyer's law firm as a landlord-respondent party. The landlord's lawyer confirmed that his law firm was just an agent for the landlord, not a party. The landlord's lawyer consented to this amendment during the hearing.

Jurisdiction

The landlord's lawyer stated that the landlord wants a declaration under section 62 of the *Act* that the *Act* does not apply to this tenancy. He said that the *Act* does not apply because the landlord and tenant share a kitchen and bathroom at the rental unit. He maintained that the landlord requires a declaration because she wants to go to the Supreme Court of British Columbia ("SCBC") in order to obtain a writ of possession against the tenant. He claimed that a declaration from the Residential Tenancy Branch ("RTB") could be used at the SCBC.

The landlord's lawyer stated that the landlord is the owner of the rental unit, which is a house that she purchased in 1992. He said that he provided a state of title certificate to the tenant, indicating that the landlord is the owner of the rental unit. He claimed that the landlord lives in the rental unit with the tenant, who is her adult daughter, since 1992, and that they share and kitchen and bathroom.

Section 62(3) of the *Act* states the following (my emphasis added):

Director's authority respecting dispute resolution proceedings

62(3) **The director may make** any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and **an order that this *Act* applies.**

Section 4(c) of the *Act*, states the following (my emphasis added):

4 This **Act does not apply to**

(c) living accommodation in which the **tenant shares bathroom or kitchen facilities with the owner of that accommodation...**

The landlord provided undisputed evidence that she owns the rental unit and that she shares the same kitchen and bathroom with the tenant.

The *Act* specifically excludes the owner of a rental unit who shares a kitchen and bathroom with the tenant. In accordance with section 62(3) of the *Act*, I find that the *Act* does not apply to this tenancy, as per section 4(c) of the *Act*.

Conclusion

I find that the *Act* does not apply to this tenancy, as per section 4(c) of the *Act*.

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: January 29, 2021

Residential Tenancy Branch