



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

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

- an early end to this tenancy and an Order of Possession pursuant to section 56;

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Does the Residential Tenancy Branch ("RTB") have jurisdiction to consider this application?

Background and Evidence

Both parties confirmed that they are half sisters and that this property originally belonged to their parents that have both passed away. Both parties further confirmed that there is not a written tenancy agreement before me or that one was ever entered into between the named parties of this hearing. The applicant confirmed that the respondent has not paid any rent since moving onto the property in 2013. The respondent confirmed that there has never been any demand for rent or mechanics of a landlord tenant relationship at any time as they are family. The respondent advised that the matter of this property is in dispute and that the will of their deceased parents is being challenged.

Analysis

The jurisdiction of the *Act*, and in turn my jurisdiction, is set out in section 2 of the *Act*.

Subsection 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*:

"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;

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. Although there are situations where family agreements can be treated as legally enforceable, for the most part, where

families' relationships are concerned, generally the relationship is viewed as non-contractual.

This relationship lacks the indicia of a tenancy agreement. In particular, the main house and cottage on the property have been the family homes for both the applicant and respondent for many years. There is no written tenancy agreement, the respondent and her husband did not pay any rent to the applicant, but rather contributed to the upkeep of the property.

For the above reasons, I find that this is a family dispute. This is not a matter within the jurisdiction of the RTB. Simply because the parties used an RTB form does not mean that the *Act* applies to their matter. Accordingly, I decline jurisdiction this application.

Conclusion

I decline jurisdiction over the applicant's application.

I make no determination on the merits of both applications. 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: July 26, 2021

Residential Tenancy Branch