



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC

Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

The respondent did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The applicant attended as did a family member on a separate phone line and they were both given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The applicant testified that they served the respondent with their notice of application and evidence by registered mail sent on April 24, 2021. While the applicant did not provide documentary evidence of service, they provided cogent, detailed and undisputed testimony and I find that the respondent is deemed served on April 29, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is this matter in the jurisdiction of the Residential Tenancy Branch?

If so is the applicant entitled to any of the relief sought or is the respondent entitled to an Order of Possession?

Background and Evidence

The applicant testified that there is no tenancy agreement between the parties and no tenant-landlord relationship or an obligation to pay monthly rent. The applicant submits that the dispute property is owned jointly by the named respondent and their brother DT who attended the hearing. The property is the subject of an ongoing dispute before the courts of British Columbia between the respondent and DT.

Analysis

The Residential Tenancy Act defines a tenancy agreement as:

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 license to occupy a rental unit

I find that there is no evidence that a tenancy agreement exists between the parties. No documentary materials showing a landlord-tenant relationship was submitted into evidence. I accept the undisputed evidence of the applicant that they reside in the property jointly owned by their family member and there has never been a need to pay rent to the respondent. I find there is a dearth of evidence to support that there is a tenancy or a landlord-tenant relationship between the parties. The only documentary material to support such a relationship exists is the 10 Day Notice dated April 9, 2021.

I find that the applicant's testimony and description of the relationship between the parties, their living arrangements, usage of property and history of residing in the property without being required to make any payments to the respondent collectively demonstrates that no landlord-tenant relationship exists between the parties that would give rise to obligations on either party under the *Act*.

Consequently, as I find there is no tenancy in place I find I have no jurisdiction to consider the present application.

Conclusion

I decline jurisdiction over the applicant's application. I make no determination on the merits of the 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: August 16, 2021

Residential Tenancy Branch