



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT RPP

Introduction

In this dispute, a third party, ostensibly acting on behalf of the deceased tenant's estate, applied for an order compelling the landlord to return the deceased's property to the third party, pursuant to section 65 of the Residential Tenancy Act ("Act"). In the alternative, should the landlord not return the deceased's property, the third party sought compensation against the landlord, pursuant to section 67 of the Act.

In attendance at the first hearing on April 1, 2021 were the third party (G.K.), a witness for the third party, and the respondent landlord. That hearing was adjourned to today's date for the sole purpose of permitting the respondent to serve their evidence on the third party. The third party confirmed that he had received the landlord's evidence. No other preliminary matters were addressed at the first hearing.

Preliminary Issue: Authority of Third Party to Act on Behalf of Tenant's Estate

In today's hearing, taking into consideration that the third party was now in possession of the respondent landlord's evidence, I turned my mind to the preliminary matter of representation and whether the third party had the legal authority to act on behalf of the deceased tenant's estate. And, therefore, whether he had the authority to act in respect of any matters arising under the Act in relation to the deceased's tenancy.

There is no documentary evidence submitted by the third party establishing that they have the legal authority to act on behalf of the tenant's estate. The deceased tenant died intestate. That is, without a will. (Though, it appears that the tenant may have had a will but had stored it in a freezer that has since gone missing.)

Section 74(4) of the Act states that a party to a dispute resolution proceeding "may be represented by an agent or a lawyer."

Residential Tenancy Policy Guideline 26 (“Advocates, Agents and Assistants”) states the following: “Agents may be required to provide written verification that they have been appointed by the landlord or tenant to act or appear on their behalf at the dispute resolution proceeding and that they have full authority to settle a claim.”

I am not satisfied on a balance of probabilities that the third party has provided satisfactory verification that he has the legal authority to act on behalf of his brother’s estate. Granted, the third party explained that he was unaware of this requirement, and this is this understandable.

As explained to the third party during the hearing, where a deceased is intestate, an individual may apply to the Supreme Court of British Columbia for a **grant of administration** in order to handle and have authority over the estate, under the *Wills, Estates and Succession Act*. This requirement was referenced on page four of the respondent’s lawyer’s correspondence dated March 12, 2021, of which the third party has a copy. Should the third party be successful in obtaining the above-noted grant of administration, then he may reapply to the Residential Tenancy Branch. (Bearing in mind, of course, that it must be within two years of the end of tenancy date.)

Conclusion

The application is dismissed, with leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 9, 2021

Residential Tenancy Branch