



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

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

- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

This matter was scheduled for a conference call at 11:00 a.m. on this date. The applicant had her son appear on her behalf. The applicant also had a witness and a Mandarin Translator call into the conference to assist him. The respondent did not call into the conference. The applicant provided documentation and sworn testimony that the respondent was served notice of this hearing by way of registered mail sent on March 3, 2022. The applicant provided Canada Post Tracking information to confirm the information. Based on sections 89 and 90 of the Act, I find that the respondent was deemed served five days after mailing on March 8, 2022. The hearing proceeded and completed in the absence of the respondent.

Preliminary Issue – Jurisdiction

The applicant is seeking an order of possession to move into the subject unit. WM submits that the applicant, which is his mother, purchased the home in 2013 and signed over the property to his wife in exchange for a tenancy. WM submits the following as noted and reproduced from his mothers online application:

"i am retired professor 80 years old, i rent since 2013, the title of landlrod is my daughter in law ,hui han, in fact, i signed the purchase property agreement and pay all ,and i transfer the house to huihan by her request, but we have lease agreement. i lived in house since 2013--till now, in 2016 nov,i agree landlord hui han living with me together, when i want to back from asian of vacation , hui han

change key and orable notice me not enter house more, i have book fly ticktet booked,”

WM submits that the property is in his wife’s name and that his mother is a tenant since 2013. WM submits that he and his wife stopped living together in September 2021.

The “lease agreement” that WM submits as the key document is a hand written note that he, his mother and his wife signed. There is no indication that it was notarized by a lawyer or that it was a subject of the purchase agreement when his mother purchased the property. That document states that if there is a dispute between the lease and trustee agreement, the trust agreement prevails; an issue which the Residential Tenancy Act does not makes determinations on. In addition, there isn’t a notarized trust agreement before me.

WM submits that the property is in his wife’s name as the legal owner, yet he did not submit that document. The documentation supplied by the applicant does not show that his mother is a tenant but, in fact, shows that she owns the property. I find that much of WM’s testimony was in contradiction to his own documentation. Based on the above, I find that I do not have the jurisdiction to hear this matter as the applicant is an owner of the property and that the Residential Tenancy Act only addresses, issues between landlords and tenants.

Conclusion

The circumstances of the dispute do not fall within the jurisdiction of the *Act*, and the application must therefore be dismissed. The applicant is at liberty to pursue other remedies under common law.

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: March 22, 2022

Residential Tenancy Branch