



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR MNRT RR LRE PSF OPR-DR

Introduction

The parties, by way of cross-applications, sought various relief under the *Residential Tenancy Act* (the “Act”).

The party M.D. (hereafter simply “the applicant” for brevity) attended the hearing which commenced at 9:30 AM. The party D.D. did not attend. While I heard brief, sworn testimony from the applicant, the preliminary issue below resolves the matter.

Preliminary Issue: Whether there is a “tenancy”

The landlord submitted a copy of the “tenancy agreement.” However, what this document is, is not a tenancy agreement. The document appears to be some sort of property transfer instrument, by which D.D. – who happens to be the applicant’s mother – transferred the property to M.D. Nowhere in the document is there mention of rent, nor does there appear to be any of the standard terms of a tenancy agreement (see sections 12 and 13 of the Act).

A couple of the terms of the document make the legal relationship anything but a tenancy. Clause 2 notes that D.D. and M.D. will both use the Property as their principal residence and that M.D. will have “sole control and access to the house located on the Property “for the duration of the Life Estate.” In other words, the mother cannot be evicted under the Act, because she has a legal right to the property for the remainder and duration of her lifetime.

Second, I note that M.D. is required to pay “all expenses for full House insurance, heating, hydro, cable and Internet in respect of the House.” The clause also requires the mother to pay \$250.00. to her son. The clause does not say when this must be paid, and there is no reference to “rent” anywhere in the document, in respect of what the mother must pay.

There is, however, a clause whereby the son can lease the property or house for rent, but this requires a written request from the mother.

The Act defines a “tenancy” to mean “a tenant's right to possession of a rental unit under a tenancy agreement” (see section 1). In this dispute, the mother’s right to possession of the property (or the house for that matter) is not by operation of any tenancy agreement, but under an agreement by which the mother agreed to gift the property to her son. Her right to possession appears to exist for the remainder of her lifetime.

For this reason, I am unable to find that the legal relationship between D.D. and M.D. is one which falls under the jurisdiction of the *Residential Tenancy Act*, as there is no “tenancy” for the purposes of this Act. Therefore, both parties’ applications are hereby dismissed without leave to reapply.

That said, the parties are not without recourse. They may consider attempting to resolve their dispute through the Civil Resolution Tribunal (see <https://civilresolutionbc.ca/>).

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

Dated: April 21, 2022

Residential Tenancy Branch