



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FFT

Introduction

A hearing was convened on February 28, 2022 in response to the Application for Dispute Resolution, in which the Applicant applied to cancel a One Month Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The hearing on February 28, 2022 was adjourned for reasons outlined in my interim decision of February 28, 2022. The hearing was reconvened on June 20, 2022 and was concluded on that date.

At the hearing on February 28, 2022 Legal Counsel for the Applicant stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on October 21, 2021 was sent to the Respondent, via registered mail, at the service address noted on the Application. Legal Counsel for the Respondent acknowledged receipt of these documents and the Applicant's evidence was accepted as evidence for these proceedings.

The Applicant submitted documents to the Residential Tenancy Branch on February 01, 2022, much of which had been previously submitted to the Residential Tenancy Branch. Legal counsel for the Applicant stated that none of these documents were served to the Respondent, with the exception of documents previously served to the Landlord. As none of the "new" documents were served to the Respondent, none of the "new" documents were accepted as evidence for these proceedings.

On May 31, 2022 the Applicant submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Applicant stated that this evidence was served to the

Respondent, via fax, on June 01, 2022. Legal Counsel for the Respondent state that this evidence was not received. As the Respondent did not acknowledge receipt of this evidence, it was not accepted as evidence for these proceedings. I note that this evidence is a Two Month Notice to End Tenancy for Landlord's Use which is not particularly relevant to the issues in dispute at these proceedings.

On June 01, 2022 the Applicant submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Applicant stated that this evidence was served to the Respondent, via fax, on June 01, 2022. Legal Counsel for the Respondent acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On June 17, 2022 the Respondent submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Respondent stated that all of this evidence, with the exception of the one-page document titled "Stat Dec 2" was served to the Applicant, via fax, on June 10, 2022. Legal Counsel for the Applicant acknowledged receiving this evidence and had no issue with the date of service of that evidence. As such, the evidence that was served to the Applicant was accepted as evidence for these proceedings.

Legal Counsel for the Applicant noted that the statutory declaration he was served with on June 10, 2022 was not signed by the person making the declaration. Legal Counsel for the Respondent agreed that a signed copy was not served to the Applicant, as it was not signed by that individual until June 13, 2022. The parties were advised that the evidence accepted is an unsigned document.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions in regard to the issue of jurisdiction. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Applicant and the Respondent agree that:

- The Applicant moved into the residence in 2007;
- The Respondent and his son were living in the residence when the Applicant moved into the unit;
- The Applicant moved into the residence at the invitation of the Respondent's son;
- The Applicant had a marital-like relationship with the Respondent's son;
- The Applicant moved into the residence with the consent of the Respondent;
- The Respondent owns the residence;
- Neither the Applicant nor the Respondent's son paid rent to the Respondent;
- There is no written tenancy agreement;
- The Respondent moved out of the residence in December of 2007;
- The Respondent's son moved out of the residence in April or May of 2021; and
- The Applicant is still residing in the residence.

Legal Counsel for the Applicant submits that:

- there is an "implied tenancy agreement";
- the Applicant has a license to occupy, which meets the definition of a tenancy agreement as that term is defined by the *Residential Tenancy Act (Act)*;
- there was a long-standing agreement that the Applicant could live in the rental unit in exchange for maintaining the property;
- the Respondent benefitted from this exchange because the Applicant helped maintain his property;
- the Respondent benefitted from this exchange because the Respondent did not have to pay the cost of insuring an unoccupied home; and
- The Respondent served the Applicant with two notices to end tenancy, so the Respondent relied on the *Act*.

Legal Counsel for the Respondent submits that:

- the Respondent does not agree that the Applicant maintained the rental property;
- there is no license to occupy as no consideration was given to the Respondent;
- the Respondent served two notices to end tenancy as the Respondent believed that would be an expedient means of resolving the issues in dispute; and
- the Respondent's reliance on the *Act* does not establish that I have jurisdiction in the dispute.

The Applicant stated that:

- she performed a variety of yard work on the property, including mowing the lawn, chopping firewood, trimming bushes, and picking fruit; and
- the Respondent never asked her to maintain the property.

The Respondent stated that:

- he never hired anyone to maintain the property, including the Applicant;
- he never asked the Applicant to maintain the property;
- the Applicant did not maintain the property;
- his son mowed the lawn while he was living there;
- he and his son maintained the property; and
- he hired a plumber when there was a water leak.

The Applicant submitted a copy of a “Notice of Family Claim”. Legal Counsel for the Applicant stated that the “Notice of Family Claim” is not related to the residence.

Legal Counsel for the Respondent stated that he is not aware of any claim before the Supreme Court that is related to the residence.

Analysis

The *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 licence to occupy a rental unit. The *Act* does not define a “licence to occupy”.

Residential Tenancy Branch Policy Guideline #9 suggests that under a “licence to occupy” a person is given permission to use a rental unit or site.

As a tenancy agreement is a contract, I find it reasonable to conclude that there must be an agreement to exchange something, such as money, goods, or a service, in exchange for a licence to occupy, or the right to occupy the rental unit.

On the basis of the information before me, I am not satisfied that the Applicant was occupying the residential complex in exchange for money, goods, or service. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Respondent did not ask the Applicant to perform any maintenance on the property. I therefore find that any work the Applicant opted to perform was not performed in exchange for the right to live in the residence.

I find that the Applicant had a marriage-like relationship with the Respondent's son, which has since ended. I find that the Respondent had a familial-like relationship with the Applicant and that she and the Respondent's son were allowed to occupy the residence because of generosity, rather than business considerations.

As I have concluded that the Applicant was permitted to live in the rental unit because of generosity, rather than for consideration, I find that the Applicant and the Respondent did not enter into a licence to occupy.

As there is no evidence that the parties entered into an oral or written the tenancy agreement and I have concluded that the parties did not enter into a licence to occupy, I cannot conclude that the parties have a tenancy agreement, as that term is defined by the *Act*.

As the Applicant and the Respondent have not entered into a tenancy agreement, I find that I do not have jurisdiction over this living arrangement.

In considering jurisdiction I have placed little weight on the Applicant's submission that the Respondent relied on the *Act* when he served the Applicant with two notices to end tenancy. I concur with Legal Counsel for the Respondent's submission that reliance on the *Act* does not establish that I have jurisdiction. Even if one, or even both, of the parties believe the *Act* applies, the issue of jurisdiction must be determined on the basis of the evidence presented.

Although Legal Counsel for the Applicant stated that the "Notice of Family Claim" is not related to the residence, I find that is inconsistent with the information in Schedule 4 of the "Notice of Family Claim" submitted in evidence. It appears from that document that the Applicant is making a claim against the property and, as such, that the rental property is linked to a matter before the Supreme Court.

Even if I am incorrect in declining jurisdiction on the basis of the absence of a tenancy agreement, I would decline jurisdiction on the basis of section 58(2)(d) of the *Act*, which prevents me from determining a dispute that is linked substantially to a matter that is before the Supreme Court.

Conclusion

As I do not have jurisdiction over this living arrangement, I decline to consider the

Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 21, 2022

Residential Tenancy Branch