



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

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

- cancellation of the respondents' Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 6, 2022 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The three applicants, applicant ANM ("applicant"), "applicant SS," and "applicant ADM," the two respondents, "respondent JO" and "respondent NM," and the respondents' lawyer attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 20 minutes.

This hearing began at 9:30 a.m. with me and the three applicants present. The two respondents and their lawyer called in late at 9:32 a.m. The two respondents and their lawyer were provided with extra time during this hearing to call back into the teleconference using two separate phones and phone lines, as they had difficulty hearing me using their one speakerphone line. The two respondents and their lawyer were ready to proceed with this hearing at 9:39 a.m. This hearing ended at 9:50 a.m.

All hearing participants confirmed their names and spelling. The applicant and the respondents' lawyer provided their email addresses for me to send this decision to both parties after the hearing.

The applicant identified herself as the primary speaker on behalf of the three applicants at this hearing. Applicant SS and applicant ADM consented to same during this hearing.

The two respondents confirmed that their lawyer had permission to represent them at this hearing and they identified her as the primary speaker. The two respondents confirmed that they co-own the property. Respondent JO provided the property address that is the subject of this application.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recording of this hearing by any party. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. I informed both parties that I could not provide legal advice to them or act as their agent or advocate. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

Issue to be Decided

Does the RTB have jurisdiction pursuant to the *Act*, to decide this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the jurisdiction claim and my findings are set out below.

The issue of jurisdiction was raised verbally by the applicant, at the outset of this hearing. Therefore, I asked both parties to make submissions regarding jurisdiction only, at this hearing. I did not hear any substantive evidence regarding the merits of the applicant’s application at this hearing.

At the outset of this hearing, the applicant stated that the applicants wanted to withdraw their application because it was not a residential tenancy dispute that should be heard by the RTB. She claimed that the RTB did not have jurisdiction to hear this matter, as it was a civil claim that should be heard by the Provincial or Supreme Courts of British Columbia. She said that she wanted me to make a decision regarding same.

The respondents' lawyer consented to same. She stated that the RTB did not have jurisdiction to hear the applicants' application because it is a matter for a Court to decide. She claimed that while she disputed that the applicants are owners of the property, the question of beneficial ownership of the property was for a Court to decide, not the RTB.

Analysis

The following sections of the *Act* state, in part:

Definitions

1 In this Act:

"landlord", in relation to a rental unit, includes any of the following:...

(c) a person, other than a tenant occupying the rental unit, who...

What this Act does not apply to

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,...

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes]...

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(a) the standard terms;

(b) the correct legal names of the landlord and tenant;

(c) the address of the rental unit;

(d) the date the tenancy agreement is entered into;

(e) the address for service and telephone number of the landlord or the landlord's agent;

(f) the agreed terms in respect of the following:

- (i) the date on which the tenancy starts;*
- (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;*
- (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;*
- (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;*
- (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;*
- (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;*
- (vi) which services and facilities are included in the rent;*
- (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.*

Both parties provided undisputed, affirmed testimony and evidence at this hearing. Both parties agreed that the RTB does not have jurisdiction to decide the applicants' application, since it is not a residential tenancy matter, pursuant to the *Act*. I agree.

The applicants provided a contract of purchase and sale, dated April 27, 2021 ("CPS"), indicating that the applicant is a buyer of the property. The applicants provided a residential agreement, dated June 5, 2021 ("RA"), stating that both parties will be living jointly and permanently in the same house, that the applicant and respondents will occupy the upper floor of the house together, that both parties will jointly maintain the property including any repairs, and that both parties will jointly pay for mortgage and utility bills.

The RA does not refer to either party as landlords or tenants, nor does it indicate that there is a tenancy or a tenancy agreement between both parties. The RA does not refer to the payment of rent, the services or facilities included in rent, the payment of a security deposit, or the periodic or fixed term of the tenancy, as required by section 13 of the *Act*, above.

I find that the CPS and RA raise questions as to whether the applicants are owners of the property. Both parties dispute whether the applicants are owners of the property.

The RTB does not have jurisdiction to determine disputes between joint owners of a property or to determine the beneficial ownership of the property.

The RTB does not have jurisdiction to decide applications, where the owner of the accommodation shares a kitchen or bathroom with the tenant, as per section 4(c) of the *Act*. The definition of a landlord in section 1 of the *Act*, does not include a tenant occupying the rental unit.

The RTB only determines residential tenancy disputes between landlords and tenants, under a tenancy agreement, pursuant to the *Act*.

For the above reasons, I decline to exercise jurisdiction over the applicants' application. I find that the applicants' application is not a residential tenancy dispute, that can be determined by the RTB, pursuant to the *Act*. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction. I informed both parties of my decision verbally during this hearing. Both parties confirmed their understanding of same.

Conclusion

I decline to exercise jurisdiction over the applicants' application.

I make no determination on the merits of the applicants' 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: June 27, 2022

Residential Tenancy Branch