



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 634245 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL-4M, AS**

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- cancellation of a 4 Month Notice to End Tenancy for Demolition (the “4 Month Notice”) pursuant to section 49; and
- authorization to assign or sublet the rental unit pursuant to section 65.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate respondent was represented by its agents. The personal applicant was represented by an individual agent (the “applicant”).

The respondent confirmed receipt of the applicant’s materials. Based on the undisputed testimony I find the respondent duly served in accordance with sections 88 and 89 of the *Act*.

The applicant initially disputed that they had been served with the respondent’s evidence but subsequently confirmed that they are in receipt of all materials including the tenancy agreement, and orders of possession issued previously by the Branch. Based on the testimony I find the applicant sufficiently served in accordance with 88 and 71 of the *Act*.

Issue(s) to be Decided

Is the applicant entitled to any of the relief sought?

Background and Evidence

The parties agree that no tenancy agreement exists between the parties. There was a valid tenancy agreement between the respondent and the mother of the applicant. The applicant resided in the rental property with their mother but were never made a tenant on the agreement. The mother passed away and the applicant continued to reside in the rental unit but did not assume the tenancy nor was a new tenancy agreement entered by the parties.

There was a previous decision under the file number on the first page of this decision and the respondent was issued an Order of Possession. The respondent testified that since receiving the Order they have not entered a new tenancy agreement with the applicant nor have they accepted any payment to create a tenancy.

The parties agree that the applicant was removed from the rental property in accordance with the Order of Possession of June 27, 2022.

The parties agree that while the applicant has filed their present application which includes a dispute of a notice to end tenancy, no such notice was ever issued.

Analysis

The definitions of a “tenancy” and a “tenancy agreement” are outlined in the following terms in section 1 of the *Act*:

“tenancy” means a tenant's right to possession of a rental unit under a tenancy agreement;

“tenancy agreement” means 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 license to occupy a rental unit.

The undisputed evidence before me is that the applicant has never paid rent to the respondent. They may have paid some money to their mother when they were occupying her rental unit but I find this is not sufficient to create a landlord-tenant relationship with the respondent.

The applicant was never listed in any written agreement, did not pay any rent directly to the respondent, and had no basis to occupy the rental unit.

I find that the applicant is an occupant, and not a tenant under the definition of section 1 of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement. As such I find the applicant has no standing to bring this present application and I have no jurisdiction to consider the matter.

I note that the parties agree that no Notice to End Tenancy has ever been issued and the applicant filed their present claim in response to correspondence from the respondent.

In any event, the parties gave evidence that the occupation by the applicant has ended with the landlord enforcing their Orders of Possession issued in a previous hearing.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss the application for dispute resolution in its entirety without leave to reapply.

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: September 2, 2022

Residential Tenancy Branch