



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing convened as a result of a “Tenant’s Application for Dispute Resolution” filed on September 28, 2022, wherein the Applicant sought to cancel a Notice to End Tenancy for Unpaid Rent or Utilities issued on September 24, 2022 (the “Notice”).

The hearing of the Application was scheduled before me at 9:30 a.m. on November 3, 2022. Both parties called into the hearing. The Applicants, M.G, H.G. and R.K. called in, as did the Respondent D.K. and a translator H.S.

Preliminary Matter—Jurisdiction

At the outset of the hearing the Tenant, R.K. stated that this was not a tenancy matter, and that the named Landlord, is his father, and the Tenant, M.G., is his mother. He confirmed that there are other family matters including support obligations and division of assets which have yet to be resolved.

The Landlord’s translator H.S. stated that while M.G. and D.K. were married they have been separated since 2008 and that M.G. and the children only moved into the rental unit because R.K. had cancer and were awaiting the completion of their residence. He further stated that the Applicants were tenants and obligated to pay \$3,100.00 per month in rent pursuant to a verbal tenancy agreement.

In written submissions provided by the Applicants, M.G. writes that she and D.K. did separate, but had moved back in together as they were giving their marriage a second chance for the sake of their family. She wrote that in October of 2020 he moved into her home as he had been diagnosed with cancer and she began caring for him.

Following this they moved into D.K.'s home and at that time he asked her to sign a cohabitation agreement and when she refused to sign it, he then claimed she was a tenant and not paying rent. M.G. further wrote that in her rental and his home, she and D.K. share a kitchen and bathroom as well as sharing meals and groceries. Finally M.G. wrote that she worked for D.K. in the family business and that D.K. has refused to pay her for her time.

In written submissions provided by the Respondent, D.K., he writes that he had a verbal agreement with M.G. that she would pay rent of \$3,100.00 per month and 80% of the utilities. D.K. further writes that both he and M.G. purchased condos which were scheduled to be completed in 2022: his in the spring and hers in the summer of 2022. While they awaited completion of their units, M.G. rented a separate unit from which she was evicted for non payment of rent. D.K. submitted that he allowed M.G. and their two children to rent from him while she waited for her unit to be finished and that she refused to pay rent, and despite being able to move into her unit, she refused to leave.

Analysis

The Respondent alleges a tenancy exists between he and the Applicant M.G. This is denied by M.G and their son H.G. who is also listed as a Tenant on the Notice and the Application.

While a tenancy agreement does not have to be in writing to be enforceable, and can be oral, there must be a meeting of the minds and an agreement between the parties as to the terms of the tenancy. In this case I find insufficient evidence of any such agreement.

I accept M.G.'s evidence that she and D.K. had separated, but moved back in together in October of 2020 when he was diagnosed with cancer and she began providing care for him. This was not denied by the Applicant. I further accept her evidence that she and D.K. lived together as a family in her rental unit for a period of time and then in his condo which had recently been completed. I accept M.G.'s evidence that while living together M.G. and D.K. shared the home, including a kitchen and bathroom and meals together.

This application was brought under the *Residential Tenancy Act*. Only tenancy matters may be determined by the Branch. Section 4(c) of the *Residential Tenancy Act* provides as follows:

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,

...

I decline jurisdiction pursuant to section 4(c) of the *Act*. On balance I find that the relationship between these parties is not that of a landlord tenant, as the parties share a kitchen and bathroom. Even in the event I am incorrect, I find it more likely this is a family dispute, over which I also lack jurisdiction.

Conclusion

I decline jurisdiction to hear this matter.

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: November 15, 2022

Residential Tenancy Branch