



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, PSF, LRE, FFT, OPR**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

The tenants applied as follows:

- For cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 39 of the Act
- For an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 63 of the Act
- For an order to provide services or facilities required by the tenancy agreement or law pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 65 of the Act

The landlord applied as follows:

- For an order of possession pursuant to section 48 of the Act

Both parties attended the hearing with the and the landlord JG also had an advocate SJ attend. The tenants JM and NS appeared with a witness JG. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenants confirmed receipt of the 10 Day Notice dated November 20, 2022 with an effective date of December 3, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with both notices in accordance with the Act.

The tenants acknowledge they did not serve the landlord with their dispute notice and supporting evidence. Therefore, I will not consider the tenants' documentary evidence.

The tenants testified that they testified that they received the landlord's dispute notice and the respective materials and I find the tenants duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenants? If so, is the landlord entitled to an order of possession?
2. Are the tenants entitled to an order requiring the landlord to provide services or facilities as required by the tenancy agreement or law?
3. Are the tenants entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit or site?
4. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The applicants moved onto the rural property with their trailer on April 1, 2021 and an occupancy agreement apparently signed by both the landlord and the tenants on September 10, 2021 was produced in evidence. There is a dispute regarding who owns the property and who gave the tenants consent to live on the rural property.

The respondent testified that he is the landlord. He holds the land title for the property. He signed the agreement with the tenants on September 10, 2021. There are no sewer and water hookups for the tenants. The tenants own their trailer that is parked on the property. His father lives in the house on the property, the tenants live in their own trailer parked on the property. The respondent further testified that his father is a guest on the property.

The respondent further testified that the tenants were required under the occupancy agreement to pay \$500.00 per month for the land rental. The respondent testified that the tenants have never paid rent as per the occupancy agreement.

The tenants stated that the individual who lives in the home of the property and who asserts ownership of the property invited the tenants to park their trailer on the land. The tenants assert they are caretakers for the individual who lives in the home on the property. This evidence was supported by the testimony of the individual who lives in the home on the land.

Both parties testified that there is an ongoing dispute in the British Columbia Supreme Court regarding ownership of the property. Neither party provided evidence of proof of ownership of the property in evidence.

Analysis

I have evidence of an occupancy agreement signed by both the applicant and respondent. The occupancy agreement states that the landlord will provide occupancy on his land to the tenants in exchange for \$500.00 per month.

Both parties agree there is a dispute as to who owns the property. Section 1 of the Act defines a landlord as an individual who owns or possesses the rental property or exercises the rights of a landlord. I have conflicting evidence both from the landlord and the tenants regarding property ownership. The respondent bears the onus of establishing that he has the authority to enter into a tenancy agreement with the tenants. Given the conflicting evidence of ownership I find the respondent has not met that burden.

I find therefore that the parties have not established that a tenancy exists. I have no jurisdiction to decide the matter as the Act does not apply to this situation.

Conclusion

Both party's applications for dispute resolution are dismissed due to lack of 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: March 14, 2023