



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT, OPU, MNRL-S, FFL

Introduction

This dispute relates to HG's April 28, 2023 Application for Dispute Resolution seeking remedy under the *Residential Tenancy Act* (Act) for the following:

- to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (10-Day Notice)
- reimbursement of the filing fee

The dispute was crossed with MK's May 4, 2023 Application for Dispute Resolution for an Order of Possession, a Monetary Order for Unpaid Rent and to retain the security deposit, and reimbursement of the filing fee.

Both parties confirm they were involved in a Supreme Court matter relating to their matrimonial separation that concluded in May 2022. The matter was appealed to the Court of Appeal and was dismissed in March 2023. The parties are legally separated, however, continued with a living agreement that is described in different terms by both parties.

HG testified that she lived in the basement of a single detached home which MK owned. MK lived upstairs. HG argued that there was not a tenancy agreement between them. Rather, she testified that they entered into an agreement in December 2014 whereby she would assist MK with his monthly mortgage payments for January 2015 to December 2016, and that she would not have to make any payments thereafter, but would be permitted to reside in the rental unit.

HG stated that this agreement was reduced to writing and submitted a copy of it into evidence. This purported agreement also contained terms relating to the matrimonial dispute that are not relevant to the current proceeding. However, in the aforementioned Supreme Court decision, the court found that the agreement document was not genuine and determined that no such agreement existed.

MK claims the tenancy started in January 2015, with a verbal agreement of \$850 monthly rent to be paid on the first day of each month. MK testified that HG paid rent

from January 2015 to December 2016, however, MK was unable to provide documentary evidence supporting this. Despite this, I accept that these payments were made, as it is largely corroborated by HG's testimony although she testifies that they were made for a different purpose.

In September 2018, MK issued a 10-Day Notice to End Tenancy for Unpaid Rent since January 2017. MK applied for an order of possession, and the matter came to a hearing before the Residential Tenancy Branch (RTB) on November 6, 2018. The presiding arbitrator declined jurisdiction, as the parties were appearing before the BCSC on a related matter. On May 4, 2023, two months after the BC Court of Appeal issued a final decision on the dispute, MK issued a new 10-Day Notice, indicating unpaid rent in the amount of \$76,000 from January 2017 to the date of the Notice.

MK testified that HG did not pay any rent since January 2017. However, he did not take action to claim the unpaid rent until September 2018. MK did not provide any evidence to demonstrate the demand of payment in some form during this 21-month period. He did not explain why, if HG was supposed to be paying him monthly rent during this time, he did not make any demand for payment. Additionally, he did not explain why, given HG continued to reside in the residential property without paying rent, he did not make any further demand for payment between September 2018 to May 2023.

I do not find it likely that, if the parties had entered into a tenancy agreement in January 2017, that MK would have allowed HG to, without objection, reside in the basement unit from January 2017 to September 2018 without paying any rent. Accordingly, I find that MK has failed to discharge his evidentiary burden to prove it is more likely than not that a tenancy agreement exists between the parties.

As such, the RTB does not have jurisdiction to hear this matter, and I decline to make any ruling. The parties may turn to an alternate forum to seek dispute resolution services.

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: July 7, 2023

Residential Tenancy Branch