



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes

Landlord's application: OPR-DR FFL
Tenant's application: CNR-MT OLC DRI LRE FFT

Introduction

This hearing was convened because of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act).

The Landlord is seeking an Order of Possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) and to recover the filing fee.

The Tenant is seeking to cancel the 10 Day Notice, including more time to make an application to dispute the 10 Day Notice, to dispute a rent increase, for an order directing the Landlord to comply with the Act, Regulation or tenancy agreement, for an order suspending the Landlord's right to enter the rental unit or property and to recover the filing fee.

Those listed on the cover page of this decision attended the hearing and were affirmed, except for counsel as they are an officer of the court. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Tenant confirmed service of the Landlord's application and their documentary evidence. The Landlord stated that they were not served with the Proceeding Package from the Tenant, and instead only received documentary evidence from the Tenant. I am not satisfied on service by the Tenant as the Tenant could not recall if they included the Proceeding Package in their registered mail package. As jurisdiction became an issue, I have proceeded with determining jurisdiction as a result below.

Preliminary and Procedural Matters

Tenant's counsel requested an adjournment as they were only contacted by the Tenant "8-9 days prior to the hearing." After reviewing the criteria for adjournments under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 7.9, this request was denied as I find that a delay in obtaining counsel does not outweigh the possible prejudice to the Landlord in delaying an Order of Possession and determination of jurisdiction. The hearing continued as a result.

Both parties were permitted to make submissions on whether the Act applies. Tenant's Counsel raised a February 7, 2019, Codicil of REB, Deceased (REB)(Codicil), which the parties confirmed they had before them. As a result, the Codicil was reviewed during the hearing. The Codicil reads in part that to hold any interest, REB has, as of the date of their death, which the parties confirmed as July 12, 2021, the mobile home, including land (Property) on the following trusts, to give to their daughter KR the option to purchase any interest owned in the Property within five (5) years of the date of REB's death. The 5 years would expire on July 11, 2026.

The Codicil also reads in part that if KRB does not exercise the option to purchase within 5 years of the date of REB's death, the Property will then be listed for sale and sold. In addition, the Codicil also permits KRB to personally use, occupy and enjoy the Property for a maximum period of 5 years from REB's death as long as KRB pays the sum of \$1,600.00 per month as rent. The Codicil also provides for rent increases that are contrary to the Act and there was no written Notices of Rent Increase under the Act submitted by the Landlord or the Landlord's Counsel for my consideration. There was also a term under the Act that if KRB fails to pay the rent, interest of 3% will be assessed and deducted from KRB's share upon sale of the Property.

The Landlord confirmed that they have not completed their involvement with the Estate.

I find that given the potential of an interest in the real property by the Tenant beyond mere possession, **I must refuse jurisdiction** on the grounds that determination of such interest is within the exclusive jurisdiction of the Supreme Court of British Columbia.

Conclusion

Given the potential of an interest in the real property by the Tenant beyond mere possession, I must refuse jurisdiction on the grounds that determination of such interest is within the exclusive jurisdiction of the Supreme Court of British Columbia.

I decline to grant the filing fees as I have found that this matter is within the exclusive jurisdiction of the Supreme Court of British Columbia.

This decision will be emailed to the parties at the email addresses confirmed during the hearing.

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: April 22, 2025

Residential Tenancy Branch