



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was convened in relation to the applicant's claim pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover its filing fee for this application from the respondents pursuant to section 72.

The applicant is an estate. KM attended as the representative of the estate. BM was named as a respondent in her capacity as power of attorney to her mother, DM.

The respondent KM raised an issue with the legibility of the applicant's amended claim. As this matter was not ultimately decided on its merits, but rather on the basis of jurisdiction, it is not necessary for me to consider whether or not the amended application was procedurally defective. With this exception, no other issues of service were raised by either party.

Issue(s) to be Decided

Does the Residential Tenancy Branch have jurisdiction to consider this application?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the submissions of the parties, not all details of the submissions and / or arguments are reproduced here.

CM died in 1984. Each child is heir to a one-fifth interests in the estate. The estate is not yet settled. The relationships among various heirs to CM's estate are fraught.

The residential property was owned 50% by CM and 50% by DM as tenants in common. DM is the daughter of CM. KM is CM's daughter. KM was appointed administrator of CM's estate in May 2013. KM and DM are CM's sons. CM has another son, who is not a party to this application.

The residential property was the family home since 1954. JM fully vacated from the residential property in 2008. KM fully vacated from the residential property in 2013. The residential property was sold in fall 2013.

In the applicant's submissions she sets out:

[KM and BM] are financially responsible for the repayment of loans to them from the estate for 50% each of the aggregate costs of the removal and disposal of their respective abandoned belongings...for providing security services....for providing services for the prevention of the unauthorized removal of estate assets....and for providing services to locate [KM], the keys to the property...and the location to which he had removed the estate assets to during and after vacating the property;

The applicant points to various legal documents in which KM declared himself as a "tenant". In particular this includes income assistance applications, bankruptcy proceedings, disability applications, and income tax returns. None of these documents were provided by the applicant in support of her claims as she is not in possession or control of any.

The applicant submits that there is an oral tenancy agreement between the estate and respondents. The applicant submits that the respondents paid rent of property taxes, property insurance, and maintenance costs. The respondents agree with this and admit that payments lapsed in later years. No amounts were paid to CM while she was alive by either respondent.

The applicant submits that she made use of the RTB process to elect into a more cost effective system.

The respondents submit that this action is an attempt by the applicant to delay settling the estate. In the respondents' submissions they have asked for compensation in the amount of \$5,000.00.

On 12 November 2015, BM (as power of attorney for DM) wrote to KM to ask her to withdraw the estate's application as BM did not consent to it proceeding.

Analysis

The jurisdiction of the Act, and in turn my jurisdiction, is set out in section 2 of the Act. Subsection 2(1) of the Act sets out that:

2 (1) Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

“Tenancy agreement” is defined in section 1 of the Act:

"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 licence to occupy a rental unit;

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention no enforceable agreement under the Act arises from the relationship. Although there are situations where family agreements can be treated as legally enforceable, for the most part where families relationships are concerned, generally the relationship is viewed as non-contractual.

This relationship lacks the indicia of a tenancy agreement. In particular, the property has been the family home since 1954, there is no written tenancy agreement, the respondents did not pay any periodic, fixed sum as rent, but rather contributed to the upkeep of the property, and the respondents are heirs to the residue of the applicant estate. On this basis, I find that this is a family dispute arising out of an estate matter. This is not a matter within the jurisdiction of the Residential Tenancy Branch.

While it is true that administrative tribunals represent a less expensive means of resolving disputes, an applicant cannot not elect into the system. As I explained to the parties at the hearing, the jurisdiction of the Residential Tenancy Branch is only by way of the express grant contained in the act.

Conclusion

I decline jurisdiction over this application.

I make no determination on the merits of the application. Nothing in my decision prevents either party from advancing their claims before a court of competent jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 29, 2016

Residential Tenancy Branch

