



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant to cancel a notice to end tenancy for unpaid rent and a notice to end tenancy for the landlord’s use of the property.

Both parties appeared for the hearing and provided affirmed testimony. The hearing process was explained and no questions on how the proceedings would be conducted were raised by the parties.

Preliminary Issue

At the start of the hearing, the Applicant informed me that she had filed the Application because the Respondent had served her with notices to end tenancy under the *Residential Tenancy Act* (the “Act”). The Applicant submitted that this was not a landlord and tenant dispute but was a common law dispute over shared ownership of the dispute unit. As a result, I asked the parties to present evidence on this matter before I made any legal findings on the notices to end tenancy.

The Applicant explained that she was in an 18 year common law relationship with the Respondent during which time they purchased a number of properties together. One of the properties is the home that the Respondent currently resides at. The Applicant provided title documentation that shows both the Applicant and the Respondent have shared ownership of that property.

The Applicant testified that the dispute unit was purchased by the Applicant and the Respondent together in 1998, although the Applicant was not put onto the title document of the dispute unit. The Applicant explained that the dispute unit was rented out by them to renters for a number of years. However, in 2013 the Applicant and the

Respondent split up. The Applicant explained that although the parties got back together for a year, it was decided that the Respondent would stay at the home in which they were both on title for and the Applicant would move into the dispute unit.

The Applicant stated that she applied for disability assistance which is paid in the amount of \$586.00 per month directly to the Respondent. The Applicant testified that the monies have been going to the Respondent to pay off the mortgage for the dispute unit and are not being provided to the Respondent as rent.

The Applicant explained that she has obtained legal advice on the matter and is currently pursuing family law action regarding the ownership of the dispute unit in the Supreme Court. However, no such action has been registered at this time.

The Applicant provided a statement from her eldest daughter who verifies that the Applicant and Respondent were in a common law relationship during which they acquired and disposed of properties together and although the relationship has now ceased, they continue to maintain ownership and interest together in the properties they own together.

The Respondent agreed that the parties were in a common law relationship and that he was currently living in premises that were owned jointly by the parties. The Respondent stated that the dispute unit was purchased when he was in the relationship with the Applicant but the title and mortgage to that property were in his name only. The Respondent stated that because he was no longer in a relationship with the Applicant, she had no right or claim to the dispute unit.

The Respondent confirmed that he had not been served with any paperwork relating to Supreme Court action and that he is out of work and now wants to move back into the rental unit which is the reason why he served the Applicant with the notice to end tenancy for landlord's use of the property. The Respondent stated that the Applicant could not be put on the title for the dispute unit because she had difficulty getting financing. The Respondent also stated that before the Applicant took occupancy of the rental unit, the tenants who were renting the dispute unit were doing so for \$1,600.00 per month.

The parties confirmed that no residential tenancy agreement had been signed by the parties and that no security deposit had been requested or paid, although the Respondent stated that on hindsight he should have requested one. The parties also confirmed that no fixed amount of rent was agreed upon but there was an

acknowledgement that \$586.00 was the amount that would be paid to the Respondent by social assistance which the Applicant is getting through her disability payments.

The Respondent confirmed that while he only visited the Applicant at the dispute unit once, he did not need to give any written notice as all he needed was to ask the Applicant for her permission to enter if she was present.

Jurisdictional Analysis

Section 58(2) (c) of the Act provides that if the director receives an Application, the director must determine the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

In this case, there is not sufficient evidence before me to show that the matter of ownership of the dispute unit is before the Supreme Court. While the Applicant testified that she is seeking to pursue this dispute through the Supreme Court, this action at the time of this hearing has not been initiated. Therefore, I am unable to decline jurisdiction in this dispute on this ground.

As a result, I must turn to the other evidence in this matter to determine if there are grounds for me to make findings on the notices to end tenancy which the Respondent disputes.

The Act defines a tenancy agreement as 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 license to occupy a rental unit.

Policy Guideline 9 titled "Tenancy Agreements and Licenses to Occupy" states that a license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time.

Under a tenancy agreement, the tenant is given exclusive possession for a term, which can include month to month. The guideline continues to state that if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise.

In order to determine whether a particular arrangement is a license or tenancy, an Arbitrator will consider what the parties intended, and all of the circumstances

surrounding the occupation of the premises. Some of the factors that may weigh against finding a tenancy are:

- Payment of a security deposit is not required.
- The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.
- The occupier pays property taxes and utilities but not a fixed amount for rent.
- The owner, or other person allowing occupancy, retains the right to enter the site without notice.
- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.
- The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

In addition Policy Guideline 27 on jurisdiction in tenancies states:

“...a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the RTB may again decline jurisdiction because the Acts would not apply.”

In this case, it is clear that the Applicant and Respondent had a common law personal relationship during which time the purchase of the dispute unit was made. While it is unclear whether the Applicant paid any money towards the purchase price of the dispute unit, it is clear to me that a tenancy was not entered into when the Applicant and Respondent split.

I make this finding because neither party provided a signed tenancy agreement that would indicate a tenancy under the Act had been established. Neither was there an exchange of a security deposit which again would have been a significant factor in finding that a tenancy has been agreed to by the parties.

While the Respondent received a fixed amount of monies from social assistance on the instruction of the Applicant, I am not satisfied that it was intended by the parties to be considered rent. There was no fixed date the amount rent was due or payable and the rent payable by previous renters was significantly higher than that paid by the Applicant. In addition, I find the fact that the Respondent did not have to give any written notice to

enter the rental unit would again suggest that a tenancy was not entered into as contemplated by the Act.

Furthermore, I find the fact that the Respondent and Applicant own a property together satisfies me on the balance of probabilities that the dispute unit was intended to be purchased together. This is further supported by the evidence that the Applicant was unable to be put on the title of the dispute unit due to financial restrictions. Therefore, I find this is sufficient evidence to show that the Applicant took more of an interest in the dispute unit that went beyond that of a landlord and tenant relationship.

Based on the foregoing analysis, I conclude there are too many factors in this dispute that go against finding that a tenancy under the Act was established and entered into by the parties. As such, the evidence shows that the Act does not apply to this dispute. I therefore find I have no jurisdiction to render a decision in this matter. The parties may seek alternative legal advice to obtain resolution to this dispute.

Conclusion

For the reasons set out above, I decline to hear the claim for 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 Act.

Dated: September 15, 2017

Residential Tenancy Branch