



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT OLC

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the respondent to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

EW, counsel for the respondent, attended the hearing with SH. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The respondent confirmed receipt of the application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the respondent was duly served with copies of the application and evidence. The respondent did not submit any written evidence for this hearing other than a proof of service for the 10 Day Notice.

The applicant does not dispute the service of the 10 Day Notice dated October 4, 2018. Accordingly, I find that the applicant was served the 10 Day Notice in accordance with section 88 of the *Act*.

Preliminary Issue:

Does this dispute fall within the jurisdiction of the Residential Tenancy Act?

Background and Evidence

The applicant DB was served with a 10 Day Notice in October of 2018 by the respondent for unpaid rent. The applicant DB submits that no tenancy exists, and therefore this matter should not be before the RTB as a tenancy dispute.

The respondent is the executor of the property where the applicant resides. Both parties are children of the deceased owner, AB, who passed away on September 10, 2017. Both parties confirmed that this matter is not currently before the Supreme Court, and that the respondent is the appointed executor per the deceased party's Will.

Although no written tenancy agreement exists, the respondent submits that a tenancy existed between the applicant and the father AB. The respondent submitted that there was an oral agreement where money and, or, caregiver services were exchanged for occupancy services. The respondent believes that the rent was set at an amount between \$300.00 to \$450.00 per month. The respondent testified that the 10 Day Notice was issued in October 2018 since the applicant has failed to pay any rent since his father passed away.

The applicant testified that he has lived at the residence with his father for over 15 years. In the latter 4 years before his father's death he resided upstairs with his father as he had to attend to his extremely ill father. The applicant testified that he has never paid any rent as he was not a tenant.

The respondent's counsel did not submit any written evidence, but provided several case references in the hearing to support the respondent's argument that the applicant should be considered a tenant under the *Act*, and therefore this matter is within the jurisdiction of the RTB.

Analysis

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"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 license to occupy a rental unit.

Residential Tenancy Branch Policy Guideline #9 allows me to consider the following factor in considering whether a tenancy exists:

- The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.

Although the respondent speaks to a value of consideration in exchange for occupancy, and an oral or implied tenancy agreement between the applicant and the deceased, I find that the respondent has not provided sufficient evidence, nor was the respondent able to provide a specific amount the applicant paid as a consideration of value for a tenancy. An estimated monthly rental amount was given in the hearing, which was not supported by any written documentation such as receipts submitted by the respondent.

I find that the applicant did not dispute that he provided services to the deceased, but that he did it out of familial obligation, and not as part of a business relationship. Furthermore, Section 4(c) of the *Act* reads in part as follows:

This Act does not apply to...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,...

The testimony of the applicant was that he resided in the upstairs portion of the home with the deceased for the last four years before his death. The *Act* does not apply to the living arrangement described.

Based on the evidence and submissions provided for this hearing, I do not find that the prior relationship between the applicant and the deceased, or current relationship between the applicant and the deceased's estate, is a tenancy.

I cannot consider the tenant's application as I have no jurisdiction in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: November 26, 2018

Residential Tenancy Branch