



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FFT, O

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the applicant to cancel a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), for an order to suspend or set conditions on the landlord’s right to enter the rental unit, site or property, to recover the cost of the filing fee and other unspecified relief.

The applicant and the respondent attended the teleconference hearing and gave affirmed testimony. During the hearing the applicant and respondent were given the opportunity to provide their evidence orally and respond to the testimony of the other party. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The applicant and respondent confirmed that they are siblings; sister and brother respectively. There is no dispute that the applicant was living with her mother in the home that is the subject property of this hearing. The respondent served his sister with a 1 Month Notice and claims there is a tenancy between the applicant and their mother and that even though an amount of rent was never discussed, that the applicant’s rent was waived in lieu of taking care of their mother who has now passed away. The respondent stated that he is the Executor of his mother’s Estate and that the home will be sold as part of that Estate. The tenant stated that rent was never discussed at all and that she was living in the home to take care of her mother.

The parties confirmed that a written tenancy agreement does not exist. The respondent did not serve the Residential Tenancy Branch (“RTB”) with any documentary evidence. The parties disputed whether the respondent was served with all of the applicant’s documentary evidence.

Preliminary and Procedural Matter

The first issue that I must decide is whether the *Act* has jurisdiction over the parties in order to proceed with the application.

The applicant and respondent confirmed they are siblings and that the applicant was living with their mother to help take care of her until she passed away. The applicant continues to reside in that home. Both parties confirmed that an amount of rent has never been confirmed and that a written tenancy agreement was not formed.

The applicant's position is that she is not a tenant.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Firstly, the definition of "rent" applies and states in section 1 of the *Act* as follows:

"rent" means **money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit,** for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

[My emphasis added]

In addition, section 2 of the *Act* applies and states:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], **this Act applies to tenancy agreements, rental units and other residential property.**

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

[My emphasis added]

Furthermore, section 13(1) of the *Act* requires that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. Based on the evidence before me, I find there is insufficient evidence to support that a tenancy agreement exists between the applicant and the respondent. In reaching this finding I have considered that there is no written tenancy agreement, that the parties are siblings and that the applicant testified that she was living with her mother to take care of her and that no amount of rent was specified by the respondent and that the applicant denied that rent was ever discussed for her living arrangement.

As a result, I find the *Act* does not apply to the living arrangement as described by the applicant and due to insufficient evidence presented by the respondent to support a tenancy agreement was formed between the parties.

Based on the above, I decline this application due to lack of jurisdiction under the *Act*.

Conclusion

I decline to hear the applicant's application due to lack of jurisdiction under the *Act*.

There is insufficient evidence before me to support that the named parties have a landlord and tenant relationship under the *Act*.

I find the *Act* does not apply to the living arrangement described at the hearing.

I do not grant the filing fee as a result as the *Act* does not apply.

This decision will be emailed to the email addresses confirmed by the applicant and respondent during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 6, 2018

Residential Tenancy Branch