



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- an Order directing the respondent to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The applicant, the applicant's mother (MD), the applicant's stepfather (JV) and the respondent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Amendment

Both parties agree that the shortened version of the respondent's first name was listed on this application for dispute resolution. In the hearing the respondent confirmed the correct legal spelling of her first name. Pursuant to section 64 of the *Act*, I amend the applicant's application to state the legal first name of the respondent.

Preliminary Issue- Service

The applicant testified that the respondent was served with a copy of this application for dispute resolution and the applicant's evidence via email on January 22, 2022. The respondent testified that the above documents were received on or around that date. I find that the respondent was sufficiently served for the purposes of this *Act*, with the above documents, pursuant to section 71 of the *Act* because receipt was confirmed.

The respondent testified that the applicant was served with the respondent's evidence via registered mail on January 17, 2022. JV and MD testified that the applicant has a disability and has the mental capacity of a 15 or 16-year-old and is on disability. JV and MD testified that they accept service on behalf of the applicant. JV testified that the January 17, 2022 registered mailing pertained to a different dispute with the Residential Tenancy Branch, filed by the respondent, but not being heard today. JV provided the file number for the respondent's application, which is located on the cover page of this decision. The respondent entered into evidence a Canada Post registered mail receipt dated January 17, 2022.

JV testified that the evidence contained in the January 17, 2022 registered mailing pertained to the respondent's application for dispute resolution, not the applicant's application for dispute resolution. The respondent testified that the evidence is the same for both files. In the hearing I confirmed with the JV, that the applicant received all five pieces of evidence uploaded into evidence by the respondent (not including the registered mail receipt). JV testified that there was a note in the January 17, 2022 evidence package which states that the evidence pertained to both applications. JV testified that the applicant, himself and DM did not have a full opportunity to review the respondent's evidence because they believed it was for the future dispute, not this dispute.

I find that the respondent served the applicant through the applicant's agents (JV and DM) with the respondent's evidence via registered mail on January 17, 2022, in accordance with section 88 of the *Act*. I find that the applicant was deemed served with the respondent's evidence on January 22, 2022, pursuant to section 90 of the *Act*. I accept the respondent's testimony that the evidence for this application for dispute resolution and the respondent's future application for dispute resolution are the same. I find that there is no requirement to serve the evidence twice, what is important is that the applicant and or agents had an opportunity to review the evidence. Based on JV's testimony, I find that the respondent clearly stated that the evidence was for both

proceedings and the applicant, through her agents, therefore had a full opportunity to review the respondent's evidence prior to today's hearing. I also note that the quantity of evidence submitted by the respondent was small and did not require significant time to review.

Preliminary Issue- Issues not Applicable

Both parties agree that the applicant moved out of the subject property in January 2022. As the applicant has already moved out, I dismiss the following claims as the issues are not longer applicable:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- an Order directing the respondent to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

Preliminary Issue- Jurisdiction

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the applicant's and respondent's claims and my findings are set out below.

Both parties agreed to the following facts. The parties to this dispute are all related. The subject property is a house with a basement suite. The applicant resided in the basement suite. The original owner of the subject property was the applicant's step grand-mother (the "original owner") who lived in the main portion of the subject house. In December of 2021, the original owner passed away. The respondent named in this application for dispute resolution is the executrix of the original owner's estate and is the step-aunt of the applicant. JV is the respondent's brother and son of the original owner. JV is married to DM.

JV testified that in late 2020 the applicant was living in another city in a rental unit that she could not afford. JV testified that at that time his mother, the original owner, was in her nineties and was in and out of the hospital. JV testified that he thought it would be a good idea for the applicant to move into the basement suite below the original owner. JV testified that the arrangement benefited both parties because subject property was more affordable than the applicant's previous rental and the applicant could help the

original owner with cooking, cleaning, garbage, recycling, and would be present if the original owner had a health emergency.

JV testified that he spoke with his mom, the original owner and they agreed that the applicant would move in at the start of January 2021 and would pay \$900.00 per month in rent. JV testified that his mother agreed to include cable and internet in the rent. JV testified that a tenancy agreement was not drafted, a security deposit was not paid, nor was a move in condition inspection report completed, because this was a family agreement.

JV testified that two days before the applicant was set to move in, the original owner reneged on her agreement to allow the applicant to move in. JV testified that he told his mother, the original owner, that the applicant had passed on other rental opportunities and did not have anywhere else to go. JV testified that despite his mother's refusal to allow the applicant to move in, JV moved the applicant into the subject rental property on January 2, 2021, while his mother, the original owner, was in the hospital.

JV testified that other family members who were in charge of the internet services refused to give the applicant the password and so the original owner agreed to reduce rent by \$50.00 per month because the applicant had to get her own internet. JV testified that the applicant only got internet because she could not get cable and internet with the \$50.00 rent reduction.

The respondent testified that her mother, the original owner, was manipulated into letting the applicant move into the basement suite while she was sick and in the hospital. The respondent testified that she lives out of province and was not privy to the agreement made by JV and her mother, the original owner. The respondent testified that her mother told her that rent was \$900.00, not \$850.00 per month.

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 respondent and a applicant respecting possession of a rental

unit, use of common areas and services and facilities, and includes a license 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.

JV testified that a tenancy agreement was not signed, a security deposit was not paid and a condition inspection report was not completed because this was a family agreement. I find, on a balance of probabilities, that the original owner and the applicant, did not intend to enter into a contractual relationship, but intended on entering into a family agreement underpinned by familial attachment. I find this relationship lacked the indicia of a tenancy agreement. I accept that money was paid monthly from the applicant to the original owner; however, I do not find that this alone is enough to find intent to enter into a legally binding contract. I find the overarching intent of this agreement was to support family and was not a tenancy agreement governed by the *Residential Tenancy Act*.

On this basis, I find that this is a family dispute, and the relationship between the parties is familial, rather than that of landlord and tenant. I find that this family dispute is not within the jurisdiction of the Residential Tenancy Branch. The applicant's application is therefore dismissed without leave to reapply.

Conclusion

The application is dismissed without leave to reapply.

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 08, 2022

Residential Tenancy Branch