

Residential Tenancies Tribunal

Application 2024-0833-NL & 2024-0853-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 15-October-2024 at am.
2. The applicant of the initial claim, [REDACTED], attended via teleconference alongside her authorized representative [REDACTED].
3. The respondent of the initial claim, [REDACTED], also attended via teleconference.
4. A witness for the applicant, [REDACTED], also attended via teleconference.

Preliminary Matters

5. The parties acknowledged they received notice of this hearing more than ten days before the hearing date.
6. The applicant raised the issue of jurisdiction. It became apparent that her application, questioning the validity of a termination notice, was brought in anticipation of the respondent's claim for an order of vacant possession. Thus, notwithstanding the fact that she applied to be heard by this tribunal, it was nevertheless her position that this tribunal does not have jurisdiction to hear the matter.
7. Parties agree on the following facts. The applicant lived in the premises together with the witness, who was her common law husband and the son of the respondent, for many years. They separated in August 2023 and proceedings are currently underway in Family Court regarding the division of property. At all times the deed to the property has been in the name of the respondent.
8. The applicant takes the position that there was never a rental agreement and that the premises is not a rental. Rather, it is her matrimonial home that she has contributed to the development of. She indicated that as such the property has been named in the proceedings as something she believes she has a legal interest in. She suggests that the termination notice issued by the respondent and the claim they bring is an improper attempt to circumvent the rightful jurisdiction of the Family Court and, as such, should be dismissed.

9. The respondent's position is that the house is and has always been his, and that the applicant's residency there is subject to a verbal rental agreement. He testified that he made this agreement in March 2008 with his son, the witness. He says the terms were that the son and the applicant would reside in the premises on a month-by-month basis and would pay for utilities and maintain the property, as well as manage an attached rental unit for his benefit, but would not be charged rent. He specifically acknowledged the applicant was not a party to this agreement, but that she did benefit from it.
10. S. 3 of the *Residential Tenancies Act*, 2018 (the *Act*) deals with the application of the *Act*. S. 3(3) states that

Application of Act

3. ...

(3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant

- (a) uses or occupies residential premises and
 - (i) has paid or agreed to pay rent to the landlord, or
 - (ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;
- (b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or
- (c) has used or occupied residential premises and
 - (i) has paid or agreed to pay rent to the landlord, or
 - (ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

11. The record is clear in the present case that the applicant did not pay rent, did not promise to pay rent, did not have a governmental department or agency pay rent or promise rent on her behalf, and did not make an agreement with the landlord concerning the occupancy of the premises in consideration of the payment of or promise to pay rent. Therefore, the facts do not make out any of the grounds that would establish a relationship of landlord and tenant in respect of residential premises.
12. I therefore conclude that this tribunal does not have jurisdiction to hear this matter and dismiss both claims.

23-October-2024

Date

[REDACTED]
Seren Cahill
Residential Tenancies Office