



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, CNC and FF

Introduction

This hearing was scheduled in response to the Applicant's Application for Dispute Resolution, in which the Applicant applied to set aside a Notice to End Tenancy for Cause and for a monetary Order for money owed or compensation for damage or loss. The Applicant withdrew his application to set aside the Notice to End Tenancy as he has vacated the rental unit and no longer wishes to reside at the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The hearing commenced at 1:00 p.m. on this date and the Applicant exited the teleconference, without warning, at 2:00 p.m. The hearing was concluded at 2:10 p.m. on this date after providing the Applicant with reasonable amount of time to rejoin the teleconference.

Issue(s) to be Decided

The issue to be decided is whether the Applicant is entitled to compensation for deficiencies with the rental unit.

Background and Evidence

The Respondent stated that he rents this residential complex from the owner; that he lives in the rental complex, that he rents rooms in the complex out to other individuals, that the occupants of the complex share the kitchen; and that the Applicant and another occupant share the upstairs bathroom facilities.

The Respondent submitted a copy of a tenancy agreement which he signed on May 09, 2010, which clearly indicates that the renter is the sole authority in determining the occupants of the residential complex.

The Respondent and the Applicant agree that they have a verbal agreement that required the Tenant to pay monthly rent of \$400.00.

Preliminary Issue

Before proceeding to examine and consider the merits of the Applicant's Application for Dispute Resolution, I must determine whether this application has jurisdiction under the *Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

It is clear that the Respondent is a tenant in the residential complex and that he shares the kitchen with other occupants in the same property. The tenancy agreement that was submitted in evidence by the Respondent clearly shows that he has the sole authority over who resides in the rental unit and clearly demonstrates that he does not have authority to act on behalf of his landlord or to represent his landlord's interests.

The *Act* defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

As there is no evidence to show that the Respondent is the owner of the rental unit, the owner's agent, or another person who is acting on behalf of the owner, I find that the Respondent is not a landlord as defined by section 1(a) of the *Act*.

As there is no evidence to show that the Respondent is an heir, assign, personal representative or successor in title to a person referred to in section 1(a) of the *Act*, I find that the Respondent is not a landlord as defined by section 1(b) of the *Act*.

As the evidence shows that the Respondent is a tenant who is occupying the rental unit, I find that he is not a landlord as defined by section 1(c) of the *Act*.

As there is no evidence to show that the Respondent is a former landlord of this rental property, I find that the Respondent is not a landlord as defined by section 1(d) of the *Act*.

In these circumstances the Applicant must be considered an occupant as defined in the *Residential Tenancy Policy Guideline Manual*, which stipulates that when a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I find that the legislation has contemplated this type of circumstance and in the absence of evidence of a joint tenancy, the *Act* does not apply. Therefore, I find that neither the Applicant nor the Respondent is governed by this *Act*.

Conclusion

As the *Act* does not apply to these parties, I find that I do not have jurisdiction in this matter and I dismiss the Application for Dispute Resolution. As I do not have jurisdiction in this matter, I decline to consider the Applicant's claim for compensation.

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: February 14, 2011.

Residential Tenancy Branch