



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF
 MNDC MNSD

Introduction

This hearing dealt with applications filed by the applicant/respondent presenting as the landlord and the applicant/respondent presenting as the tenant.

For the sake of clarity I will refer to the named parties throughout this decision as follows: (1) NL who is identified on both applications as being the landlord and (2) TT who is identified on both applications as being the tenant.

Issue(s) to be Decided

1. Do these matters fall within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

At the outset of the hearing I raised the issue of jurisdiction. NL affirmed that the matters pertain to a five bedroom one level house which he has rented for approximately three years from the owner. He confirmed he and his wife are the tenants and have been granted permission to occupy the house as they wish. NL confirmed that if rent was not paid to the owner then the owner SK would seek action against NL.

NL advised that he has no responsibility or authority to maintain the rental unit outside the normal obligations set out for a tenant. NL specifically confirmed that if any maintenance was required such as appliances or the roof needing repair the responsibility would be that of his landlord, the owner.

TT's advocated submitted that they are of the position that NL is a landlord as he is subletting the rental unit and entering into contracts to rent out individual rooms with common shared spaces. He further argued that this scenario is a lodging house which is similar to single room occupancy (SRO) units which fall within the jurisdiction of the

Residential Tenancy Act. Therefore they surmise NL is a landlord and the *Residential Tenancy Act* applies.

NL confirmed his agreement with the owner is a written tenancy agreement. At the end of the hearing I requested NL to provide me with a copy of the agreement he has with the owner. I assured TT and her Advocate that I would attach a copy of this agreement to this decision to ensure they were given an opportunity to review the document in the interest of upholding the principles of natural justice.

Analysis

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas. In order to find a tenancy is in place I must be satisfied that the parties meet the definition of landlord and tenant.

Section 1 of the Act defines a landlord, in relation to a rental unit, to include 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** [emphasis added]
 - (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;

A copy of the agreement between NL and the owner of the property along with a letter written by NL was received by the *Residential Tenancy Branch* on November 4, 2011, copies of which will be included with this decision. As I requested only a copy of NL's

tenancy agreement with the owner only that tenancy agreement will be considered in my decision. The information provided in NL's letter will not be considered for this decision.

After reviewing NL's tenancy agreement with the owner of the property I find NL is a tenant and the owner of the property is his landlord as defined by the Act.

An Agent as defined by Black's Law Dictionary is "one who is authorized to act for or in place of another; a representative".

The evidence supports NL has no authority or obligation to maintain the rental property as an agent for the landlord as prescribed under the Act, nor is there any indication in NL's tenancy agreement that he has the authority to act as agent for the owner. Accordingly I find there to be insufficient evidence to support NL has the authority to act as the owner's agent in the capacity as a landlord.

A sublet or sublease is a lease given by the tenant or lessee of a residential premises for a specific period of time to a third person for a period of time that is less than the Tenant's original lease period, and where the Tenant no longer occupies the rental property. Therefore I do not accept the Advocate's position that NL has sublet the unit.

SRO's are customarily hotels or larger houses that have been converted to single room rental units whereby corporations, private owners, or their agents enter into tenancy agreements with tenants who occupy single rooms. Resident managers and/or agents who may reside in these SRO facilities are occupants based on their employment with full rights to act as a landlord. The difference with SRO's are the property owner/landlord or their agent or resident manager have the authority to act on behalf of the Landlord, to represent the Landlord's interests, and/or to enter into the agreements with tenants. As there is insufficient evidence to prove NL has the authority to act as Agent for the Landlord I do not accept the position that this scenario is the same as tenancy agreements to rent rooms in single room occupancy (SRO) facilities.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where 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 original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, I find NL does not meet the definition of a landlord and I find TT to be an occupant. Thus, there is not a tenancy agreement in place between ML and TT to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that ML and TT do not have rights or obligations to each other under the *Residential Tenancy Act* and therefore I do not have jurisdiction to resolve a dispute between the parties.

Conclusion

I HEREBY DISMISS the matters pertaining to both applications, for want of jurisdiction.

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 07, 2011.

Residential Tenancy Branch