



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the Applicant's Application for Dispute Resolution, in which the Applicant has made application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Respondent for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. The parties were given an opportunity to present evidence in regards to the Application for Dispute Resolution, however they were clearly advised that I would not consider the merits of that evidence if I determined I did not have jurisdiction in the matter.

Issue(s) to be Decided

The issues to be decided are whether the Applicant is entitled to compensation for being told to vacate the rental unit and to recover the filing fee from the Respondent for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Act*.

Background and Evidence

The Applicant stated that he entered into a tenancy agreement with the Respondent; that he moved into the rental unit on May 01, 2011; that he paid monthly rent of \$550.00 to the Respondent; that he shared the rental unit with the Respondent; and that he believes the Respondent was his landlord.

The Respondent stated that he entered into a tenancy with an agent for the owner of the residential property; that he pays monthly rent to the agent for the owner of the residential property; that he supplements his monthly rent payment by renting out rooms in the house to "roommates"; that the agent for the owner of the residential property is aware that he supplements rent payment by renting out rooms in the house to other people; that the agent for the owner of the residential property does not approve his selection of "roommates" and does not get involved with the agreements he makes with those people; that he has to pay the entire monthly rent to the owner of the residential property regardless of the number of people living in the house; that the Applicant

moved into the rental unit on May 01, 2011; that the Applicant paid monthly rent of \$550.00 to the Respondent; and that he shared the rental unit with the Applicant.

The Applicant submitted no evidence to refute any of the aforementioned testimony of the Respondent.

Preliminary Issue

Before considering 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*.

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;

The undisputed evidence is that the Respondent is a tenant in this rental unit. On the basis of the testimony of the Respondent and in the absence of any evidence to the contrary, I find that the Respondent has no authority to act on behalf of his landlord and/or to represent his landlord's interests.

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 Guidelines*, 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*; that neither party was obligated to end this tenancy in accordance with the *Act*; and that neither party is entitled to compensation as a result of breaching the *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.

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 16, 2012.

Residential Tenancy Branch