



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant for an order of possession, and a monetary order for unpaid rent.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 17, 2012, a Canada post tracking number was provided as evidence of service, the respondent did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the respondent has been duly served in accordance with the Act.

Preliminary issue

The first issue that I must decide is whether the Act has jurisdiction over the parties in order to proceed with the application.

The tenancy began on November 15, 2009. Rent in the amount of \$550.00 was payable on the first of each month. The respondent was not required to pay a security deposit.

The applicant submitted that he is a tenant with a tenancy agreement with the owner of the property. The applicant states that he lives in the rental unit and rented a bedroom to the respondent to help pay the rent and they shared all the common areas such as kitchen, living area and bathroom.

The applicant states the respondent has not resided at the rental property since August 2011. The applicant states he contacted the respondent and asked him to pay his rent or remove his belongings from the property, however, the respondent refuses to do either.

The applicant states that the respondent does not have any obligation to the landlord to pay rent as he is not a co-tenant on the tenancy agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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 respondent under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

The evidence of the applicant was he pays rent to the landlord under a tenancy agreement. The evidence of the applicant was that he is a tenant who occupies the rental unit, and rented a room to help pay the rent. Therefore, I find the applicant is a tenant and not a landlord as defined by the Act.

Section 13 of the Residential Tenancy Policy Guidelines states:

Where a tenant allows a person who is not a tenant to move into the premises and share 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.

In this case, the applicant allowed another person to move into the premises and share rent, under an agreement. A new tenancy agreement with the owner of the rental unit to have the respondent added as a co-tenant was never entered into. Therefore, I find the respondent is an occupant as defined under the guideline and not a tenant and has no rights or obligation under the tenancy agreement.

As this is a dispute between a tenant and an occupant and not a dispute between a landlord and tenant. I find that there is no jurisdiction for the applicant to proceed with their application and I dismiss the application without leave to re-apply.

Conclusion

The applicant's application is dismissed for lack 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: March 26, 2012.

Residential Tenancy Branch