



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Preliminary Issues

Upon review of the application the Applicant requested that the spelling of the Respondent's names be corrected to match the spelling on the document she provided in evidence. The style of cause was amended, pursuant to section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

Service of the hearing documents, by the Applicant to the Respondent, was done in accordance with section 89 of the Act, sent via registered mail on April 30, 2012. Mail receipt numbers were provided in the Applicant's verbal testimony.

The Applicant appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Does this matter fall within the jurisdiction of the *Residential Tenancy Act*?

Background and Evidence

The Applicant affirmed that she began occupying the suite in July 2011 after negotiating a verbal agreement with her female friend who also occupied the suite. The Applicant did not pay a security deposit and had agreed to pay her female friend \$250.00 each month. Then in December 2011 her female friend moved out leaving some of her possessions behind. The Applicant began to pay \$500.00 for per month rent and continued to pay the money to her female friend who would pass the payment onto the Respondent.

The Applicant is of the opinion that she has a verbal tenancy agreement with the Respondents partner who was not named in this dispute. She stated she did not name him in this dispute because he told her he was not going to get involved so she named his partner and their Corporation's name.

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;

In this case the evidence supports the Applicant entered into a verbal agreement with an existing tenant to become her roommate. After the existing tenant moved out the Applicant continued to pay rent to this roommate.

There is insufficient to support that the original tenant had any authority or obligation to maintain the rental property as an agent for her landlord as prescribed under the Act, nor is there any indication that the original tenant had any authority to act as agent for the owner. Accordingly I find there to be insufficient evidence to support the original tenant had the authority to act as the owner's agent in the capacity as a landlord.

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 the Applicant to this dispute does not meet the definition of a tenant; rather she is an occupant. Thus, there is not a tenancy agreement in place between the Applicant and Respondents to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that the Applicant and Respondent have no 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 DECLINE TO HEAR this matter, 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: June 21, 2012.

Residential Tenancy Branch