



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution to obtain a monetary order for unpaid rent or utilities and to recover the cost of the filing fee from the respondent.

The parties 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 Applicants affirmed they are tenants in a three bedroom apartment and have a tenancy agreement with the landlord of the building. They advertised and acquired a roommate to occupy the third bedroom and share in the rent. This roommate was not added to their original tenancy agreement based on guidance provided by their landlord.

The Applicants confirmed they do not have authority to act as an agent for their landlord and they do not have the authority or obligation to maintain or repair the rental unit. They acknowledged that they entered into a verbal agreement with the respondent to move in and share the rent in the amount of \$435.00 per month. They were of the opinion that they were her landlords so they are seeking a monetary order for loss of May 2012 rent as their roommate vacated the unit with short notice.

The Respondent affirmed that she was not added to the tenancy agreement and that she moved out of the unit after her roommates issued her a notice to vacate by the end of May 2012.

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 Applicants, who are tenants of the rental unit, entered into a verbal agreement with the Respondent for her to become their roommate. This Respondent was not added to the tenancy agreement as a tenant.

The Applicants confirmed they do not have authority to act as an agent for the landlord as prescribed under the Act. Accordingly I find there to be insufficient evidence to support the Applicants had the authority to act as the landlord or 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 written 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 landlord therefore the respondent is an occupant. Thus, there is not a tenancy agreement in place between the Applicants and Respondent to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that the Applicants 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 28, 2012.

Residential Tenancy Branch