



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicants to obtain a Monetary Order for the return of their security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to allow the Applicants reduced rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Respondent for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

Issue(s) to be Decided

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

Background and Evidence

At the outset of the hearing the Respondent affirmed that his son entered into a tenancy agreement as a tenant with the owner of the two bedroom apartment. His son's tenancy agreement stipulated that there could be two occupants in the rental unit so the Respondent took it upon himself to turn the living room into a bedroom and to rent the living room and second bedroom out to the two Applicants under separate tenancy agreements.

The Respondent confirmed that he took on the role of a landlord to the two Applicants, entering into written tenancy agreements, without permission from the owner to act as a landlord or her agent. He advised that when the owner found out he had taken on the additional two tenants she ended his son's tenancy and everyone had to vacate the apartment. He stated that he was of the opinion that he sublet his son's rental unit.

The Applicants confirmed the above information after which a brief discussion took place. I explained how this matter did not fall under the *Residential Tenancy Act* after

which the Respondent stated that he would be returning each Applicant's deposit in the next couple of days by registered mail.

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;

Upon review of the evidence before I find the Respondent had no authority or rights to the rental unit or his son's tenancy agreement. Therefore, I find the Respondent had no authority to act as a landlord. Even if his son was named as landlord on the tenancy agreements with the Applicants, the son would not have the right to be a landlord as defined under 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 that neither the Respondent nor his son had 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 the son's tenancy agreement that he had the authority to act as agent for the owner. Accordingly I find there to be insufficient evidence to support the Respondent had 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. Based on the aforementioned, I do not accept the Respondent's position that he had sublet the unit on his son's behalf because his son, the Tenant, was still residing in the rental unit.

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 Respondent does not meet the definition of a landlord and I find both Applicants to be occupants. Thus, there is not a tenancy agreement in place between these parties which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that these parties 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 DECLINE to hear these matters, 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: October 4, 2012.

Residential Tenancy Branch