



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RPP

Introduction

This hearing was scheduled in response to an 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 for an Order requiring the Respondent to return personal property to the Applicant.

Both parties were represented at the hearing.

The Respondent submitted documents to the Residential Tenancy Branch, copies of which were served to the Applicant. The Applicant acknowledged receipt of the Respondent's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Applicant entitled to compensation for loss of quiet enjoyment of the rental unit and for damage to her personal property, and is there a need for an Order requiring the Respondent to return personal property to the Applicant?

Background and Evidence

The Applicant and the Respondent agree that the Applicant resided in the rental unit with the Respondent; that the Applicant had her own bathroom and bedroom but that they shared kitchen facilities; and that the Respondent was not the owner of the rental unit.

The Applicant stated that she paid rent to the Respondent and that she did not sign a tenancy agreement with the Respondent or the Respondent's landlord.

The Respondent submitted the first two pages of the tenancy agreement for this rental unit which identifies her and her husband as the tenants of the rental unit and the Applicant as an occupant of the rental unit. The Respondent stated that the agreement is signed by her and her husband; that the Respondent generally paid a portion of the rent to the Applicant; that the Applicant then paid the rent to her landlord; that on one occasion the Applicant paid the rent directly to the Respondent; and that she was not

acting on behalf of the landlord when she permitted the Applicant to live in the rental unit.

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 Applicant, who presents herself as a tenant, lived in the same rental unit with the Respondent. The tenancy agreement clearly indicates that the Respondent is a tenant in this rental unit and that the Applicant is an occupant. There is nothing in the agreement that would cause me to conclude that the Respondent had authority to act on behalf of his landlord and to represent his landlord's interests.

The *Residential Tenancy Act (Act)* defines a landlord as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act, the tenancy agreement or a service agreement; the heirs, assigns, personal representatives and successors in title to an aforementioned person; a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit; or a former landlord.

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, assignee, 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 she 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 is an occupant in the rental unit, as that term is defined in the *Residential Tenancy Policy Guideline Manual*, 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*.

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: December 11, 2012.

Residential Tenancy Branch