



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 5, 2012, to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and for the return of their security deposit.

The Applicant appeared at the teleconference hearing; however no one on behalf of the Respondent appeared.

Issue(s) to be Decided

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

Background and Evidence

At the outset of this proceeding the Applicant advised that the named Respondent owned the house in question with her spouse. He stated that he rented a room and shared the kitchen, bathroom, and living room with the Respondent.

When I informed the Tenant that I did not have jurisdiction he argued that he did not have proof that they were owners of the property and submitted that they may be tenants themselves. He confirmed that he dealt only with the Respondent and her spouse in matters pertaining to this tenancy.

Analysis

Section 4 (c) of the *Residential Tenancy Act* stipulates that the *Act* does not apply to living accommodations in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

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;

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 that these matters do not fall within the jurisdiction of the *Residential Tenancy Act*, under either scenario presented by the Applicant.

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: February 04, 2013

Residential Tenancy Branch

