



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 13, 2013. The Applicant filed seeking a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement; an Order to have the Respondent comply with the Act; and recover the cost of the filing fee from the Respondent.

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.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's 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

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

Background and Evidence

The Respondent submitted documentary evidence which included, among other things, copies of: a tenancy agreement between himself and the owner of the property C.D.; and a CD containing photos, an adobe document, and a movie of the exterior of the house.

The Applicant submitted documentary evidence which included, among other things, copies of: a tenancy agreement between herself and M.M., the respondent; e-mail communications between the parties; and a written notice to end tenancy issued by the respondent M.M.

The Respondent testified that he has a tenancy agreement with the owner of the property and that he is the tenant. He described his relationship with the J.H., the applicant to this dispute, as being roommates and she pays him directly for her rent. He confirmed that he has no authority to act as agent for the owner and he does not have authority to hire contractors to perform work or maintenance on the property without the Owner's consent.

The Applicant testified that she agreed with M.M.'s description of their relationship as being roommates and confirmed she pays her rent to him directly. She did not dispute anything M.M. stated; however, she argued that this relationship fell under the jurisdiction of the *Residential Tenancy Act* because her tenancy document states that it was a sublease listing M.M. as a primary tenant and herself as a "sub-lessor".

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;

After reviewing M.M.'s tenancy agreement entered into with the owner of the property I find he is a tenant and the owner of the property is his landlord as defined by 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 M.M. has no authority or obligation to operate or maintain the rental property as an agent for the landlord as prescribed under the Act. Furthermore, there is no term in M.M.'s tenancy agreement that gives him the authority to act as agent for the owner. Accordingly I find there to be insufficient evidence to support M.M. has 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. Therefore, I do not accept the applicant's position that M.M. has sublet the unit to her.

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 M.M. does not meet the definition of a landlord and I find the applicant J.H. to be an occupant. Thus, there is not a tenancy agreement in place between M.M. and J.H. to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that M.M. and J.H. 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 these parties.

Conclusion

I HEREBY DISMISS the matters pertaining to both applications, for want of jurisdiction. Accordingly, I decline to award recovery of the filing fee.

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 19, 2013

Residential Tenancy Branch

