



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicants to cancel a notice to end tenancy for landlord's use of rental property for an order to have the landlord make emergency repairs and repairs for health and safety reasons, to suspend or set conditions on the landlord's right to enter rental unit, to allow access to the unit and allow a tenant to reduce rent for repairs.

Both parties appeared. gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary issue

The first issue that I must decide is whether the Act has jurisdiction over this matter in order to proceed with the application.

The respondent stated that she has a tenancy agreement with the owner of the rental property. The respondent stated she rented out a portion of the premises to help pay the rent as her daughter has moved-out of the premises.

The respondent stated that the applicants do not have any obligation to the owner to pay rent as they are not a co-tenant on the tenancy agreement and have no legal rights under the Act.

The applicants stated that they rented the premises from a local popular website and the respondent has always presented herself as a landlord. The applicants acknowledge that the respondent is not the owner of the property. The applicants stated that they have attempted to contact the owners; however, they will not return their telephone call.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

“Landlord”, in relation to a rental unit, includes 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**
 - (i) is entitled to possession of the rental unit, and*
 - (ii) exercises any of the rights of a respondent 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 respondent is a tenant who has a tenancy agreement with the owner of the rental property, which gives her the right to occupy the premises. Therefore, I find the respondent is not a landlord as defined by the Act. Rather, I find the respondent is a tenant who occupies the rental premises.

Section 13 of the Residential Tenancy Policy Guidelines states:

Where a tenant allows a person who is not a tenant to move into the premises and share 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.

In this case, the respondent allowed another person under an agreement to move into the rental premises to help pay rent. A new tenancy agreement with the owner of the rental property to have the applicants added as a co-tenant was never entered into. Therefore, I find the applicants are not a tenant as defined under the guideline. Rather, I find the applicants are occupants and have no legal rights under the *Residential Tenancy Act*.

As this is a dispute between a tenant and an occupant and not a dispute between a landlord and tenant, I find that there is no jurisdiction for the applicants to proceed with their application and I dismiss the application without leave to reapply.

Conclusion

The applicants' application is dismissed for lack 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: July 16, 2013

Residential Tenancy Branch

