



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNC, OPT
For the landlord: OPC, MNDC,

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The listed tenant (DC) applied for seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and an order of possession for the rental unit.

The listed landlord (MM) applied for an order of possession for the rental unit due to alleged cause, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

I began the hearing at the scheduled time, at which time neither party was in attendance. Five minutes into the hearing, DC dialled into the telephone conference call hearing and I began asking him questions.

Fourteen minutes after the hearing began, MM dialled into the telephone conference call hearing and the hearing continued.

Issue(s) to be Decided

Is DC entitled to an order of possession for the rental unit and to an order cancelling a 1 Month Notice?

Is MM entitled to an order of possession for the rental unit, a monetary order, and to recover the filing fee?

Does this dispute fall under jurisdiction of the Residential Tenancy Act?

Background and Evidence

The rental unit in question here is on the main floor and the listed landlord MM lives in the upper suite.

During the hearing, the listed tenant DC stated that he paid rent directly to MM; however MM was also a tenant, who rented the entire home from the owner of the residential property or his agent and then rented out living space to other tenants.

DC testified, and MM later confirmed, that MM paid the monthly rent for the entire residential property to the owner, using the rent money paid by DC to supplement that monthly rent.

MM stated that the owner was aware that she rented out space to other tenants.

MM confirmed that she did not act for the owner in renting out the property.

DC confirmed that he was aware that the landlord here was not the owner of the residential property.

Analysis

The *Act* defines a landlord 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 landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I accept the evidence before me that the listed landlord, MM, is a tenant of the owner/landlord ("owner") and that she supplements her obligation to pay rent to the owner by renting out a portion of her rental unit. MM collected rent cheques from DC, which were put into her account, and then paid rent to the owner.

From the evidence presented in the hearing, I accept that no tenancy agreement ever existed or was contemplated between the tenant here, DC, and the owner. As a result I find that the applicant/tenant DC is considered an "Occupant" as defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

Occupants

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 tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In addition, I find that the applicant cannot meet the definition of a landlord as defined by the *Act*. The applicant has not provided any evidence that she has the authority to act on behalf of the owner or as the agent and is excluded by subsection (c) of the definition of “landlord” in the Act as she occupies the rental unit. I find the owner’s knowledge that the landlord was supplementing her income does not amount to being an agent for the owner.

On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a joint tenancy, the *Act* does not apply.

Therefore, I find this dispute as between the parties listed here as tenant and landlord does not fall within the jurisdiction of the Act.

Conclusion

I therefore decline to accept jurisdiction of the two applicants’ applications.

The parties are at liberty to seek the appropriate legal remedy to this dispute.

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: August 13, 2013

Residential Tenancy Branch

