

A matter regarding PHS Community Services Society dba Portland Hotel Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, RPP, FF

Introduction

This hearing was scheduled in response to the Application for Dispute Resolution, in which the Applicant has made application for a monetary Order for money owed or compensation for damage or loss; for the return of the Applicant's security deposit; for an Order requiring the Respondent to return personal property belonging to the Applicant; for comply with the *Residential Tenancy Act (Act)*; and to recover the fee for filing an Application for Dispute Resolution.

The Applicant stated that on August 22, 2013 the Application for Dispute Resolution, the Notice of Hearing, and a document she wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Applicant submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the Respondent did not appear at the hearing.

Issue(s) to be Decided

Is the Applicant entitled to compensation for being denied access to the rental unit; to the return of her security deposit; and is there a need to issue an Order requiring the Landlord to return personal property?

Background and Evidence

The Applicant stated that the Respondent rented this residential complex from the owner of the property; that she agreed to pay monthly rent of \$500.00 to the Respondent; that the Respondent was not acting on behalf of the owner when he collected her rent or allowed her to occupy the residential complex; that she understands the Respondent allowed her to occupy the complex for the purposes of subsidizing his rent; that she primarily occupied the lower portion of the residential complex, although she was permitted to use the oven on the main floor of the complex; and that the two living spaces were not separated by a locking door.

Analysis

Before considering the merits of the 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 testimony of the Applicant shows that the Respondent is a tenant in the subject property and that he was not acting on behalf of his landlord or representing his landlord's interests when he permitted the Applicant to live in the rental unit.

The *Residential Tenancy Act (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;

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, assign, 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 he 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 must be considered an occupant as 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: September 30, 2013

Residential Tenancy Branch