



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      OPR, MNR

### Introduction

This dispute resolution process originated upon the landlord's application for a direct request proceeding pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent. The landlord's application was successful, as the original Arbitrator awarded the landlord a monetary order for unpaid rent for October 2013 in the amount of \$1100 and an order of possession for the rental unit due to unpaid rent in a Decision dated November 13, 2013.

On November 19, 2013, the tenant filed an application for review consideration of the Decision and orders of November 13, 2013, which resulted in a favourable decision.

The reviewing Arbitrator, in a Review Consideration Decision dated November 21, 2013, suspended the original Arbitrator's Decision and orders of November 13, 2013, and ordered a review hearing. The tenant's application for review consideration was granted by the reviewing Arbitrator on the basis that there was a "convoluted set of circumstances surrounding the tenancy and the relationship between the tenant, the landlord and the unit owner."

The reviewing Arbitrator also stated the Residential Tenancy Branch ("RTB") would notify both parties of the time and date of the review hearing and that failure to attend the hearing would result in a decision being made on the basis of information before the Arbitrator.

At this hearing, which was the review hearing, the tenant attended; the landlord, the original applicant, failed to attend.

As the Review Consideration Decision did not require the tenant, the successful applicant in the application for review consideration, to serve the landlord with a notice

of this review hearing, I proceeded with this hearing upon that basis, with the assumption that the landlord received her Notice of Hearing letter from the RTB.

The hearing process was explained to the tenant, following which she provided affirmed testimony and referred to relevant documentary evidence supplied in advance of the hearing.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

#### Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the *Residential Tenancy Act* so that I have authority to resolve this dispute?
2. Will the Decision and orders of November 13, 2013, be confirmed, varied, or set aside?

#### Background and Evidence

The tenant submitted that the original applicant, listed as the landlord and hereafter referred to as "KF," was not her landlord; rather KF was a tenant of the owner of the rental unit. In explanation, the tenant submitted that the owner and KF had a tenancy agreement for a fixed term through November 1, 2013; however KF intended on vacating the rental unit prior to the end of her fixed term due to a change in circumstances. The owner then advertised the rental unit as being available for July 2013, the tenant responded to the ads and was told by the owner to contact KF for a viewing.

According to the tenant, she agreed to take the rental unit and paid her first month's rent, July 2013, and security deposit to the owner. The tenant supplied a copy of the cheque to the owner.

The tenant submitted KF arranged with her to perform a condition inspection of the rental unit on June 30, 2013, and to pick up the keys. The tenant further submitted that KF informed her that after the tenant moved in, KF would no longer be responsible for the condition of the rental unit or any other obligations of under the tenancy agreement.

The tenant submitted that KF then did not want turn over the keys unless these two parties signed a tenancy agreement, for a fixed term shorter than the original fixed term,

as a form of protection for KF, as the owner was out of town. The tenant submitted that she did pay rent to KF for August and September, for KF to then give the owner, as he is habitually out of town and otherwise occupied.

According to the tenant, she next signed a fixed term tenancy agreement with the owner on October 1, 2013, with that tenancy beginning on October 1, 2013, running until September 30, 2014. The tenant said she paid her October 2013, rent to the owner, as well as rent for all subsequent months. The tenant supplied a copy of that signed tenancy agreement and the October rent cheque.

The tenant submitted that KF was never her landlord, as she was a tenant herself, vacating the rental unit.

### Analysis

The Act defines a landlord, in relation to a rental unit, as the owner, the agent for the owner, or someone on behalf of the owner permits occupation of the rental unit and performs duties under the Act or the tenancy agreement.

In the case before me, I find that the original applicant, KF, cannot meet the definition of a landlord as defined by the Act.

I accept the evidence of the tenant that she entered into a tenancy agreement with the owner for a tenancy beginning July 1, 2013, when she moved into the rental unit and paid the first month's rent and a security deposit to the owner, and that the tenancy was formalized with a written tenancy agreement signed by the tenant and the owner on October 1, 2013. Although KF and the owner were previously in a fixed term tenancy, I find that tenancy ended when KF vacated the rental unit on June 30, 2013, when this tenant moved into the rental unit.

As I find the original applicant, KF, does not meet the definition of a landlord under the Act, I find this dispute as between the parties listed here as tenant and landlord does not fall within the jurisdiction of the Act.

I therefore decline to accept jurisdiction of the application for dispute resolution filed by KF.

On this basis, I set aside the original Decision, monetary order for \$1100, and the order of possession for the rental unit, all dated November 13, 2013, pursuant to section 82(3) of the Act.

Conclusion

I have declined to accept jurisdiction of this application for dispute resolution filed by KF.

The Decision, monetary order and order of possession for the rental unit granted on November 13, 2013, in favour of KF are set aside, and they are no longer valid or enforceable.

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: January 21, 2014

---

Residential Tenancy Branch

