



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 20, 2014, by the Applicant, seeking an Order of Possession.

The Applicant was represented by his Agent at the scheduled teleconference hearing.

Issue(s) to be Decided

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

Background and Evidence

At the outset of this hearing the Applicant's agent, hereinafter referred to as agent, provided affirmed testimony that the former tenant allowed the named respondents to move into this property. She stated that the respondents never entered into a tenancy agreement with the owner of the property and they have never paid rent to the owner.

The agent submitted that the owner resides in a different city and he had thought his property was vacant, since his former tenant moved out. She indicated that the owner has requested her assistance in getting these people off of his property.

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;

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.

In this case the Respondents have never entered into an agreement, oral or written, with the owner to rent the property and they have never paid him rent. Rather, they were allowed access to the property by the former tenant.

Based upon the aforementioned, I find the Respondents to this dispute do not meet the definition of a tenant; rather they are occupants. Thus, there is not a tenancy agreement in place between the Applicant and Respondents to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that the Applicant and Respondents have no rights or obligations to each other under the *Residential Tenancy Act* and therefore I do not have jurisdiction to resolve a dispute between the parties.

Conclusion

I HEREBY DECLINE TO HEAR this matter, for want 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 14, 2014

Residential Tenancy Branch

