



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Applicant on October 15, 2014, to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Applicant who provided affirmed testimony. The Applicant testified that she personally served the Respondent with her application and Notice of hearing documents on October 17, 2014. Based on the submissions of the Applicant I found the Respondent had been sufficiently served notice of this proceeding, in accordance with section 89 of the Act, and I proceeded in absence of the Respondent.

Issue(s) to be Decided

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

Background and Evidence

The Applicant testified that she is a Tenant and she has rented the basement suite since December 2011 under a written tenancy agreement with the owner of the house. Rent of \$950.00 is required to be paid on the first of each month.

The Tenant submitted that since her children are now grown and moved out she has been renting out the two other bedrooms to people who help to pay the rent. The Tenant stated that the Landlord is always made aware of who is residing in the basement suite with the Tenant but they are never added to her tenancy agreement.

The Tenant argued that she has permission from the Landlord to bring in the additional roommates in the capacity as Agent, as long as the Landlord knows who is residing in the unit with her. She confirmed that the requirement for maintenance and repairs lies with the Landlord.

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 Agent as defined by Black's Law Dictionary is "one who is authorized to act for or in place of another; a representative".

There was no evidence to support that the Applicant has the authority or obligation to maintain and/or repair the rental property as an agent for the landlord as prescribed under the Act, nor is there any documentary evidence to support the Applicant has the authority and responsibility to act as a full agent for the owner. Accordingly I find there to be insufficient evidence to support the Applicant has the authority to act as the owner's agent, in the capacity as a landlord.

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 written tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, I find Applicant does not meet the definition of a landlord and I find the Respondent to be an occupant. Thus, there is not a tenancy

agreement in place between these two parties to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination these parties do not have 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 DISMISS the matters pertaining to both applications, 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: November 28, 2014

Residential Tenancy Branch

