



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Applicant has applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Applicant stated that on July 11, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondent, via registered mail, at the service address noted on the Application. The Applicant submitted a Canada Post receipt 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 *Residential Tenancy Act (Act)*; however the Respondent did not appear at the hearing.

On November 13, 2014 the Applicant submitted numerous documents to the Residential Tenancy Branch, which she wishes to rely upon as evidence. The Applicant stated that these documents were served to the Respondent by registered mail on November 13, 2014. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the Applicant entitled to a rent refund and compensation because the Respondent rented her a portion of the Respondent's rental unit, without authority from the Respondent's landlord?

Background and Evidence

The Applicant contends that the Respondent is a tenant in this residential complex and that she rented the Applicant the basement suite without authority from the Respondent's landlord.

The Applicant stated that she moved into the rental unit on May 26, 2014. She stated that date on the tenancy agreement, which was submitted in evidence, is incorrect. She

stated that she responded to an internet advertisement for this rental unit and that the Respondent represented herself as the landlord of the rental unit.

The Applicant stated that there are two suites in this residential complex, which are separated by doors, one of which does not lock. She stated that she lived in the lower suite and the Respondent lived in the upper suite.

The Applicant stated that shortly after she moved into the rental unit she learned that the residential complex was managed by a professional management company. She stated that she contacted the management company, who advised her that the Respondent is not the landlord of the residential property and that they were not aware the Respondent was living in the lower suite. She stated that the representative of the management company told her that they would direct the Respondent to ask the Applicant to complete a rental application.

The Applicant stated that she completed a rental application, at the request of the Respondent, sometime in the middle of June of 2014. She noted that the date on the rental application agreement, which was submitted in evidence, is incorrect.

Analysis

Before considering the merits of the Application for Dispute Resolution I must determine whether this application has jurisdiction under the *Residential Tenancy Act (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 undisputed evidence is that the Respondent is a tenant in the residential property and that she has no authority to act on behalf of her landlord and/or to represent her landlord's interests.

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;

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 she 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*.

I find that the Applicant was therefore an occupant in the rental unit. When a tenant allows a person who is not a tenant to move into a residential property that is under her control, the new occupant has no rights or obligations under the tenancy agreement, unless all parties, including the landlord, 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 or a co-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 *Act*.

Dated: November 20, 2014

Residential Tenancy Branch