



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, CNC, CNL, AS, RR, MT, MNDC, MNR, LAT, AAT, LRE, SS

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant/applicant applied for an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause, an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property, an order allowing the tenant to assign or sublet the rental unit as the landlord has unreasonably withheld permission to do so, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss, a monetary order for the cost of emergency repairs, an order authorizing the tenant to change the locks to the rental unit, an order requiring the landlord to allow access to the rental unit, and an order suspending or setting conditions on the landlord's right to enter the rental unit.

The tenant/applicant also applied for an order granting more time to make an application to cancel a notice to end tenancy and an order for substituted service of documents other than by the methods permitted under the legislation.

The tenant/applicant and landlords/respondents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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.

Preliminary issue- Due to the information contained in the applicant's application and the documentary evidence of both parties, at the outset of the hearing the issue of jurisdiction under the Residential Tenancy Act was explored and dealt with.

Issue(s) to be Decided

Does the Residential Tenancy Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, is the applicant entitled to the relief sought in his application?

Background and Evidence

The two listed respondents identified their positions in this matter. "BF" stated without dispute that he owned the residential property, a home with an upper and lower suite. "EK" stated without dispute that she rents the entire home from BF as a care facility for the benefit of a friend, who has a debilitating and non-curable disease.

EK submitted further that her friend lives now in the lower suite and that two others rented the top floor for a period of time. The two others rented a bedroom to the applicant here, until the two others moved out of the upper suite, leaving the applicant to rent the upper suite on his own. The undisputed evidence showed that that there had been no written tenancy agreement between the two others and the applicant and that no security deposit had been paid by the applicant to either the two others or the respondent here, EK.

EK submitted that she supplements the monthly rent she pays to BF with the rent she receives from the applicant.

The undisputed evidence showed that EK had a written tenancy agreement with BF only, and that no written tenancy agreement exists between EK and the applicant.

I note that as the respondents had not submitted the written tenancy agreement into evidence, I allowed the respondents to fax the tenancy agreement after the hearing, with the proviso that the applicant also be sent a copy. The respondent did submit the written tenancy agreement after the hearing, and the document reflected that the

tenancy was between BF and EK, with a total monthly rent owing to BF and a co-landlord.

BF as well denied that the applicant was his tenant.

In response to my question, the applicant stated that he paid his rent in cash in an envelope at the mailbox in the front of the residential property and did not receive receipts. The applicant stated that he believed he was now a tenant of BF, as he was tired of dealing with EK due to lack of responses.

The applicant did not deny that BF owned the home.

Analysis

Section 1 of 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 who permits occupation of the rental unit and performs duties under the Act or the tenancy agreement.

I find the evidence before me shows that one of the listed landlords, the respondent EK, is a tenant of the other listed respondent, BF, and that she supplements her obligation to pay rent to BF, the owner, by renting out a portion of her rental unit.

In addition, I find that the respondent EK cannot meet the definition of a landlord as defined by the Act. There is no evidence that the respondent EK has the authority to act on behalf of the owner or as the agent.

Additionally, I find that the applicant/tenant does not have the rights conferred under the Residential Tenancy Act to a tenant; for instance, as I find insufficient evidence to show that the applicant here can request a repair to the rental unit of the owner, or receive a reduction in rent, or request an order changing the locks, among other things.

I also do not find evidence to show that a tenancy was ever formed between the applicant and respondent BF, as I do not accept that the applicant pays any monthly rent to BF, the owner.

As a result I find that the applicant is considered an "Occupant" as defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

Occupants

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 tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a joint tenancy, the *Act* does not apply.

Therefore, I find this dispute as between the parties listed here as tenant and landlords does not fall within the jurisdiction of the *Act*.

Conclusion

Due to the above, I decline to accept jurisdiction of the applicant's application and I find that this dispute between the parties is not as between landlord and tenant.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

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: May 25, 2015

Residential Tenancy Branch

