



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Applicant's claim against the Respondent for monetary compensation in the amount of \$5,000.00 and to recover the filing fee for the Application. The Applicant claimed under the *Residential Tenancy Act* (the "Act").

Only the Applicant appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Applicant served the Respondent by registered mail, sent on November 29, 2014. Under the Act, registered mail is deemed served five days after mailing. Refusal or neglect to accept registered mail is not a ground for review under the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Issues

Jurisdiction became the primary issue in this matter, since the testimony and written submissions of the Applicant were that when he first moved into the rental unit the Respondent owned the rental unit and they shared bathroom and kitchen facilities in the house.

The Applicant further testified that at some point the Respondent sold the house to a different person, who then became the "new owner".

The Respondent made arrangements with the new owner to continue renting the property back to the Respondent, although the Applicant was not involved in this tenancy between the Respondent and the new owner.

The Applicant paid rent to the Respondent but according to the Applicant they did not have a tenancy agreement with the new owner that identified the Applicant as a tenant.

He continued to pay rent to the Respondent and the Applicant had no business relationship with the new owner according to the testimony and submissions.

Issue(s) to be Decided

Is there jurisdiction under the Residential Tenancy Act?

Analysis

The background and evidence pertaining to jurisdiction are described above under preliminary issues.

The Act only gives the Director or the appointed delegate of the Director - here an Arbitrator - authority or jurisdiction to resolve disputes and make monetary awards in living arrangements between a landlord and a tenant. The Act defines who is a landlord and who is tenant, and what living arrangements are considered to be tenancies that come under the jurisdiction of the Act.

Not all situations where money is paid for living accommodations are considered to be tenancies under the Act. Jurisdiction is explained in policy guideline #27. This policy guideline explains,

“The legislation does not confer upon the [Branch] the authority to hear all disputes regarding every type of relationship between two or more parties. The [Branch] only has jurisdiction conferred by the legislation over landlords, tenants and strata corporations.”

[Emphasis added.]

Section 4 of the Act sets out situations where the Act does not apply and excludes certain living arrangements. Under this section the Act does not apply to:

“4(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,”

[Reproduced as written.]

This means that the time that the Applicant lived at the property when it was owned by the Respondent the living arrangements were excluded from the Act and not considered a tenancy for the purposes of the Act.

When the Respondent sold the rental unit to a new owner, the Respondent became a tenant of the new owner and the new owner became landlord to the Respondent. A landlord is defined under section 1 of the Act as:

"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;

...

(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;"

[Emphasis added.]

Since the Respondent was **a tenant occupying the rental unit**, he was not considered to be a landlord as defined under the Act.

There is also no evidence the Respondent had received the landlord's written permission to sublet a portion of the rental unit to the Applicant as required under the Act, or to be the landlord's agent and rent out a portion of the rental unit.

There is also no tenancy agreement between the Applicant and the new owner, where the Applicant may be considered as a tenant along with the Respondent, and for these reasons the Applicant would be considered an occupant.

Therefore, I find the Applicant is an occupant and is not a tenant under the Act, and the in the circumstances before me, I find the Act has no jurisdiction in this dispute.

The Applicant was advised to seek advice from the Provincial Court (Small Claims Division) on the proper forum to make their claim.

Conclusion

I find that the Act has delegated no authority to me to make a determination in this dispute. I find the Act does not apply to this living arrangement. The Application is therefore dismissed without leave.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 15, 2015

Residential Tenancy Branch

