



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 09, 2015 seeking to Ent Tenancy Early (ET) and obtain an Order of Possession. The Applicant also sought to recover the cost of the filing fee from the Respondent.

The hearing was conducted via teleconference and was attended by the Applicant who gave affirmed testimony that he personally served the Respondent with copies of his Application and evidence documents on June 16, 2015 in the presence of a Police Officer. Based on the submissions of the Applicant, I find the Respondent was sufficiently served notice of this proceeding in accordance with section 89 of the Act. Therefore, I continued in the absence of the Respondent.

Issue(s) to be Decided

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

Background and Evidence

The Applicant testified that he has occupied this property as a tenant for approximately 13 or 14 years. He confirmed that he rents the entire single detached house, including front and back yards. He said he currently pays rent of \$1,825.00 per month.

The Applicant submitted that the Respondent to this dispute is one of his roommates who had been renting an outer building from him. The Applicant asserted that his landlord has knowledge that he rents space to roommates which helps him pay the rent. The Applicant confirmed that he does not have authority, oral or written, to act as his Landlord's Agent nor does he have the authority to initiate or conduct repairs to the rental unit or 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;

In this case the evidence supports the Applicant is a tenant who occupies the rental unit. The rental unit in this case consists of a single detached house with a front and back yard. The Respondent was described as being the Applicant's roommate who was brought on to help the Applicant pay his rent.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find there is insufficient to support that the Applicant had any authority or obligation act as agent for his Landlord as prescribed under the Act or to maintain or repair the rental property as an Agent. Accordingly I find there to be insufficient evidence to support the Applicant had the authority to act as the Landlord'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 tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, I find the Respondent to this dispute does not meet the definition of a tenant; rather he is an occupant. Thus, there is not a tenancy agreement in place between the Applicant and Respondent to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that the Applicant and Respondent 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 DECLINED TO HEAR this matter, for want of jurisdiction and the application is Dismissed, without leave to reapply.

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 13, 2015

Residential Tenancy Branch

