



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC O FF

Introduction

This hearing was scheduled in response to the Applicant's application for Dispute Resolution filed on January 23, 2015. The issue of jurisdiction was raised after review of the Applicant's submission where she mentioned her landlord in relation to the subject property. Each party was advised that this session would deal with the issue of jurisdiction regarding the Residential Tenancy Act (the Act). If jurisdiction was found then each person would be sent an Interim Decision and a Notice of Reconvened Hearing to hear the matters pertaining to the application. If jurisdiction was not found then a final Decision would be issued dismissing the application.

The hearing was conducted via teleconference and was attended by the Applicant and the Respondent. Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other.

The Respondent submitted that he did not receive the Applicant's second evidence package until July 30, 2015 and that package was taped to his door. The Applicant submitted that her second evidence package was personally handed to an adult female who resides with the Respondent on July 29, 2015. The Respondent confirmed that he had had an opportunity to review the latest evidence submission.

Based on the above, I concluded the Respondent would not be prejudiced if the Applicant's second evidence package was to be considered, as he confirmed that he has had an opportunity to review that evidence prior to this hearing. Furthermore, if jurisdiction is found the Respondent will have additional time to prepare his oral response to that evidence prior to the reconvened hearing. Accordingly, all documentary evidence submissions received prior to August 6, 2015 will be considered if this matter proceeds.

During the hearing each party was given a full opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks in regards to jurisdiction. Following is a summary of the submissions and includes only that which is relevant to the matter of jurisdiction.

Issue(s) to be Decided

- 1) Does this matter fall under the jurisdiction of the Residential Tenancy Act (the Act)?

Background and Evidence

Applicant's submissions

The Applicant entered into a written fixed term lease as Tenant to rent the entire four bedroom house. Her lease began on September 1, 2013 and ended August 31, 2014 the date she moved out.

During her tenancy, the Applicant submitted that she had permission from the owner to "sublet" three of the four bedrooms to other people. Those people shared the common areas (kitchen, bathroom, living room, laundry) with her as she continued to reside in the fourth bedroom for the duration of her tenancy.

The Applicant asserted that she was of the opinion that she would be considered a landlord and those who she sublet to would be her tenants under the Act. She stated that she was a landlord because she entered into written tenancy agreements with those sublet tenants.

The sublet tenants paid their rent directly to the Applicant and all issues brought forth by the sublet tenants were to be brought to the Applicant's attention. The Applicant paid the full rent directly to the owner with her own personal cheque. Any issues with the rental property were brought to the owner by the Applicant.

The Applicant did not have a written agreement with the owner of the property that designated her as Agent for the owner. The Applicant had no responsibility to repair or maintain the property as landlord or landlord's agent.

The Applicant argued that the owner knew of her sublet tenants as he had met each of them when he was at the rental unit for other business. She acknowledged that the sublet tenants could also be referred to as her roommates.

Respondent's Submission

The Respondent entered into a written tenancy agreement with the Applicant for the furnished bedroom. He occupied the bedroom and shared the common areas with the Applicant and other roommates from September 2013 to March 1, 2014.

The Applicant told the roommates that all rent was to be paid directly to the Applicant. All issues regarding the rental unit were to be discussed only with the Applicant. They were instructed not to discuss issues with the owner and no other options were provided to the roommates

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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
 - (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;
- [emphasis added with bolded text]

Notwithstanding the Applicant's assertion that she held the title of landlord simply by entering into a tenancy agreement with the other occupants, the undeniable evidence was the Applicant was the tenant of the 4 bedroom house based on her tenancy agreement with the owner. The Applicant rented the entire house and resided in the rental unit at the same time as the Respondent. The Applicant did not have written authority to act as Agent for the owner.

Based on the foregoing, I find the Applicant does not meet the definition of Landlord as prescribed under the Act, as she was a tenant occupying the rental unit.

When a landlord allows a tenant to sublet a rental unit, the tenant vacates the property for a specified period of time, which must be less than the full term of the tenancy. During the term of the sub-let the tenant retains rights and obligations under the tenancy agreement.

In this case the Applicant remained living in the rental unit; therefore, she did not sublet the rental unit.

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.

The Respondent was not added to the Applicant's tenancy agreement. The owner did not enter into a written tenancy agreement listing both the Applicant and Respondent as tenants. Therefore, I conclude the Respondent was not a tenant; rather, he was an occupant.

I conclude the named Applicant and Respondent to this dispute do not meet the definition of a landlord and tenant; rather the Applicant is a tenant and the Respondent 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 DECLINE TO HEAR this matter, for want of jurisdiction; and the application is hereby 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: August 07, 2015

Residential Tenancy Branch

