



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of most materials submitted as evidence by the landlord and the tenant acknowledged the residential tenancy agreement submitted by the landlord.

Preliminary Issue: Jurisdiction

At the outset of the hearing, the tenant raised the issue of whether the Residential Tenancy Branch has jurisdiction to hear this matter. He referred to the *Residential Tenancy Act* sections addressing subletting as well as Residential Tenancy Policy Guideline No. 19 relating to assignments and sublets.

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.
[emphasis added]

The tenant provided undisputed testimony that, from the outset of this tenancy on November 1, 2015, the landlord and the tenant both resided in the rental unit at the dispute address property. The landlord submitted a copy of a residential tenancy agreement signed by both parties and referencing a \$230.00 security deposit paid by the tenant as evidence that this living arrangement falls inside the purview of the Residential Tenancy Branch. The agreement also provided for a monthly rental amount of \$460.00. Both parties agreed that the tenant paid \$460.00 per month to the applicant/'landlord' and that the applicant paid the entire rental amount to the owner/landlord.

Analysis: Preliminary Issue/Jurisdiction

In considering the evidence and submissions of both parties testified that;

- *The applicant resides in the rental unit;*
- *The applicant rents the rental unit from a third party who is not the owner;*
- *The applicant testified that he does not represent the owner of the rental unit;*
- *Two to three residents reside in the rental unit at any given time;*
- *The applicant accepts "rent" from the respondent and provides it to a third party;*
- *There is a written agreement between the applicant and respondent titled, "residential tenancy agreement".*

For a matter to be considered under the *Residential Tenancy Act*, both parties to the application must have a role that fits within the scope of the *Act*. To consider a matter under the *Act*, a tenancy must be formed with both a tenant and a landlord. Under the *Residential Tenancy Act* definitions section (section 1), a landlord is defined;

"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 owner, ...
- (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 respondent, when the context requires this;
[emphasis added]

The applicant in this matter does not own the rental unit or act on the behalf of the owner. The applicant has no formal relationship with the owner, based on his testimony. Contrary to the wording of section 1(c), the applicant in this matter is a tenant occupying the rental unit and therefore he is excluded from being considered a landlord under subsection 1(c) or any of the other categories that define a landlord under the *Act*.

Both parties testified that the applicant offered bedrooms with shared kitchen and bathroom to the respondent and that the applicant soon became one of three occupants to this residence including the respondent. The applicant testified that he gathered money from the respondent each month and provided it to the “landlord”. The applicant relied on the signed residential tenancy agreement however the taking of a portion of the rent and a “security deposit” from another resident does not on its own constitute a residential tenancy.

Residential Tenancy Policy Guideline No.19 addresses alternative agreements, including assigning and subletting. The applicant submitted that he should be considered a sub-landlord. The Policy Guideline states,

A sublease is a lease given by the applicant... of residential premises to a third person (the sub-tenant or sub-lessee). ... The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the sub-landlord of the sub-tenant.

The policy with respect to a sublease is that the sub-landlord (the original tenant) retains their obligations with respect to the tenancy. The policy further states;

A tenant may assign or sublet his or her interest in a tenancy agreement or lease with the consent of the landlord. ... the proposed new tenant is not a party to the tenancy agreement until such time as the respondent has agreed to assignment or sublet, and the formal transfer is made.

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. As with all tenancy matters, this agreement should address the use of the unit itself as well as common areas, services and facilities. The landlord sought the consent of the landlord and prepared a written tenancy agreement however he did not vacate the rental unit. While there may have been some informal and changeable understanding between the applicant and respondent, the testimony of both parties is evidence the applicant and the tenant were roommates, perhaps co-tenants.

Based on the applicant's description of the rental arrangement with the respondent, I find that this arrangement was neither a tenancy nor a sublet and therefore the arrangement is not governed by the Residential Tenancy. As a result, I find that I do not have jurisdiction in this matter.

As the landlord has not been successful in his application, he is not entitled to recover the filing fee from the tenant.

Conclusion

I decline to hear this matter as I do not have jurisdiction.

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 24, 2016

Residential Tenancy Branch

