



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP FF LAT LRE O OLC RPP

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 14, 2016, seeking to cancel a notice to end tenancy and several other order requests.

The hearing was conducted via teleconference and was attended by the Applicant. No one was in attendance on behalf of the Respondent. The Applicant provided affirmed testimony that he did not serve the Respondent with notice of this application; rather, he told him about the hearing.

Issue(s) to be Decided

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

Background and Evidence

The Applicant submitted affirmed testimony that his roommate was the tenant. Upon further clarification, the Applicant stated his roommate was the only person on the lease. He submitted that he was of the opinion that his roommate was his landlord.

Analysis

The *Residential Tenancy Act* (the *Act*) and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

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;

[My emphasis added by bold text]

*Policy Guideline*13 defines an occupant 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 in writing to include the new occupant as a tenant.

I concur with *Policy Guideline*13 and find it is relevant to the matters currently before me.

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

The evidence supports the Applicant entered into an agreement with an existing tenant to occupy the rental unit as a roommate.

In the absence of a written agreement with the owner or property manager, I conclude that there was insufficient evidence to support that the Respondent had any authority to act as an agent for the owner or landlord. Rather, the evidence pointed to the fact that the Respondent was himself, a tenant

Based upon the aforementioned, I find the Applicant to this dispute does not meet the definition of a tenant; rather he was 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 pursuant to section 62 of the *Act*, that the Applicant and Respondent have no rights or obligations to each other under the *Residential Tenancy Act*. Therefore, I do not have jurisdiction to resolve a dispute between the parties. .

Conclusion

I declined to hear these matters for want of jurisdiction. The Applicant is at liberty to seek remedy through the Court which holds competent jurisdiction.

This decision is final, legally binding, and 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: September 01, 2016

Residential Tenancy Branch

