



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution, dated August 30, 2016 (the “Application”). Pursuant to the *Residential Tenancy Act* (the “Act”), the Applicants sought an order cancelling a 2 Month Notice to End Tenancy for Landlord’s Use of Property, dated August 28, 2016 (the “2 Month Notice”).

The Applicants attended the hearing on their own behalves. The Respondent also attended on his own behalf. All parties giving evidence provided a solemn affirmation.

No issues were raised with respect to service and receipt of the Notice of a Dispute Resolution Hearing, the Application, or the Applicants’ documentary evidence. The Respondent did not submit any documentary evidence.

The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues

Are the Applicants entitled to an order cancelling the 2 Month Notice?

Background and Evidence

The parties agreed on the terms of the living arrangement between the Respondent and the Applicants. The Respondent rents the premises from the owner and lives in the upper unit. He rents the lower unit to the Applicants. The parties agreed the Applicants moved into the basement suite on June 1, 2013, and currently pay rent to the Respondent in the amount of \$843.78 per month. The Applicants also paid deposits totaling \$800.00 to the Respondent.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 1 of the *Act* states:

"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;
- (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
 - (iii) 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, I find the Respondent does not fall under any of the definitions of landlord, above, and is therefore not a landlord as defined by the *Act*. Rather, the Respondent is a tenant who occupies the rental premises pursuant to a tenancy agreement with the owner of the premises.

Residential Tenancy Branch Policy Guideline 13 states:

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 tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, the Respondent allowed the Applicants to move into the rental premises that he was occupying. There was insufficient evidence presented to indicate a new tenancy agreement adding the Applicants as co-tenants was entered into with the owner of the rental premises. Therefore, I find the Applicants are not tenants. Rather, the Applicants are occupants as described in Policy Guideline 13 and have no legal rights under the *Act*.

As this is a dispute between a tenant and an occupant and not a dispute between a landlord and tenant, I find that there is no jurisdiction for me to consider the Application.

Conclusion

I decline jurisdiction to hear this matter. The Application is dismissed.

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: October 21, 2016

Residential Tenancy Branch

