



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OPT AT AS

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Applicants on October 5, 2016. The Applicants filed seeking the following: a \$820.00 monetary order; an Order of Possession for tenants; orders to allow tenants' access; and an order to allow a tenant to assign or sublet.

The hearing was conducted via teleconference and was attended by the Applicants who provided affirmed testimony that the Respondent was personally served notice of this application and Notice of Hearing documents on October 14, 2016.

### Issue(s) to be Decided

1. Was there sufficient evidence to prove this matter fell within the jurisdiction of the *Residential Tenancy Act (the Act)*?

### Background and Evidence

The Applicants testified that in July 2016 they responded to an on-line advertisement from a tenant who was seeking a roommate. They entered into a verbal agreement with that tenant and began occupying the unit as of July 25, 2016.

The Applicants asserted that approximately 24 hours after they moved in they met with the building manager, the named respondent to this dispute, to obtain permission to move into the tenant's suite. The Applicants submitted that it was at that meeting that they filled out a rental application and criminal record check form for the manager. The Applicants stated they were never provided copies of those application forms.

The Applicants argued they were of the opinion that they were going to be added to the tenant's lease and become her co-tenants. They confirmed they were never asked to sign changes to the tenant's lease and they paid their rent directly to the tenant and not to the manager.

The Applicants submitted they were told by the manager that they would be offered a one bedroom unit to move into on their own. However, the tenant took the only one bedroom unit that became available and moved into that unit on September 22, 2016.

On approximately September 22, 2016 the Applicants returned to the unit and found that the locks had been changed. A few weeks later they found an Order of Possession taped to the door. They noted that the Order of Possession did not list their names or the Respondent's name. Rather, the Order listed a corporate landlord's name and the tenant.

The Applicants filed an application for Review Consideration in response to the aforementioned Order of Possession. The Arbitrator issued a Decision October 31, 2016 finding there was insufficient evidence to prove the Applicants were tenants and ordered as follows:

*Accordingly, all occupants including the Review Applicants must vacate the rental unit in accordance with the Order of Possession dated October 21, 2016.*

[Reproduced as written]

In closing, the Applicants stated they continue to reside in the unit and that the hydro was turned off.

### Analysis

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*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* 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 make a determination on this application I must first be satisfied that the parties named in this dispute 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.

[my emphasis added by bold text]

A tenancy agreement may be amended to change or remove a term, other than a standard term, only if all parties (landlord and all tenants) agree to the amendment in writing, pursuant to section 14(2) of the *Act*.

An occupant is defined in Residential Tenancy Policy Guideline 13 where a tenant allows a person who is not a tenant to move into the premises and share the rent. The policy stipulates the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent/landlord(s), tenant(s), and occupant) agree to enter into a written tenancy agreement to include the new occupant(s) as a tenant. I concur with this policy and find it is relevant to the matters currently before me.

By their own submissions the Applicants entered into a verbal roommate agreement with a tenant and were never added to the tenant's written tenancy agreement with the approval of the landlord. Furthermore, the Applicants paid their rent directly to the tenant and not the building manager or landlord. Based upon the aforementioned, I find there was insufficient evidence before me to prove the Applicants and Respondent met the definitions of landlord and tenant. Rather, I conclude the Applicants were occupants and not tenants; as the Applicants were never added to the written tenancy agreement as required by section 14(2) of the *Act*.

Therefore, I find there was insufficient evidence to prove there was a tenancy agreement in place between the Applicants and Respondent to which the *Residential Tenancy Act* applies. Accordingly, this application cannot proceed for want of jurisdiction.

### Conclusion

There was insufficient evidence to prove the Applicants were tenants. As such the application could not proceed for want of 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: November 15, 2016

---

Residential Tenancy Branch

