



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, O, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on June 20, 2016 wherein the Applicant, K.W., sought a Monetary Order for Unpaid Rent and for recovery of the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter--Jurisdiction

K.W. testified that she is the "primary tenant" and he has personally signed a lease with the Landlord, who is the owner of the property to rent a two bedroom suite. She stated that the Respondent, L.M., is her subtenant and occupies the other bedroom. She did not accept a security deposit from L.M., however L.M. did pay \$850.00 per month in rent.

L.M. moved out of the second bedroom on June 19, 2016.

K.W. sought monetary compensation in the amount of \$950.00 representing her claim for unpaid rent from June 18, 2016 to July 15, 2016 as well as recovery of the \$100.00 filing fee.

Introduced in evidence was a copy of a document which is described as a “roommate agreement” and which was signed by both parties on May 20, 2016. On this document, K.W. is defined as the “Tenant” and L.M. is defined as the “Roommate” as well as Subtenant”

L.M. testified that she “forgot about the written part”, in reference to the “roommate agreement”, and further stated that she confused by K.W.’s application.

In her Application for Dispute Resolution, K.W. identifies herself as the “Landlord”.

Section 1 of the *Residential Tenancy Act* provides the following definition of Landlord:

"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
 - (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]

K.W. failed to provide a copy of her residential tenancy agreement with the property owner. She testified that she had been given authority by the Landlord to permit occupation of the rental unit by others. She did not claim to be acting as an agent of the Landlord, rather she submitted she had sought to create a sub-tenancy with her roommates.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as

such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge.

Based on the evidence before me, I am not satisfied that I have jurisdiction under the *Residential Tenancy Act* to hear the dispute between these parties. I find that K.W. is not a Landlord as contemplated by section 1 of the *Residential Tenancy Act*, and in particular, section 1(c).

The parties are roommates who entered into an agreement which may, or may not form a binding contract. Should K.W. wish to pursue financial compensation from L.M., the appropriate forum to resolve this dispute is the B.C. Provincial Court (Small Claims Division).

Conclusion

K.W. is not a Landlord as contemplated by section 1 of the *Residential Tenancy Act* and I therefore decline jurisdiction to hear the dispute.

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: December 5, 2016

Residential Tenancy Branch