



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, OLC, FF

Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$7000.00, and recovery of the \$100.00 filing fee.

The applicant(s) testified that the respondent was served with notice of the hearing by registered mail that was mailed on July 9, 2016; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence.

The applicants testimony was taken under affirmation.

Issue(s) to be Decided

The first issue I dealt with was the matter of jurisdiction.

Background and Evidence

The applicant testified that the respondent was renting this rental unit, and had sublet a portion of the unit to her.

The applicant further testified that there was no written tenancy agreement; however she paid a security deposit to the respondent and paid monthly rent to the respondent.

The applicant further testified that she has no idea whether or not the respondent had the landlords permission to sublet the rental unit.

The applicant further testified that at the beginning of the tenancy she was also required to pay the first and last month rent.

Analysis

Is my finding that the applicant has not met the burden of proving that there is any landlord-tenant relationship here.

The definition of landlord in the Residential Tenancy 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 (my emphasis)**, 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;

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a **room or space (my emphasis)** within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an

occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*.

There is no evidence that the respondent was acting as an agent on behalf of the landlord, and therefore the respondent, in this case, is the tenant renting the rental unit and she has allowed the applicant to live in a portion (room or space) of the rental unit. The respondent however continues to occupy the rental unit, and therefore the applicant is considered to be an occupant/roommate.

It is my decision therefore that the Residential Tenancy Act has no jurisdiction over this claim.

Conclusion

I hereby declined jurisdiction over this matter.

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: January 17, 2017

Residential Tenancy Branch