



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, O, and FF

Introduction

This hearing was convened in response to the Application for Dispute Resolution, in which the Applicant applied for a monetary Order for money owed or compensation for damage or loss; "other"; and to recover the fee for filing this Application for Dispute Resolution.

The Applicant stated that on July 26, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted with the Application were sent to the Respondents' service address, via registered mail. The female Respondent acknowledged that both Applicants have received these documents and the evidence was accepted as evidence for these proceedings.

On January 03, 2017 the Respondents submitted 1 page of evidence to the Residential Tenancy Branch. The female Respondent stated that on January 03, 2017 this document was mailed to the service address provided for the Applicant, via registered mail. She stated that this service address did not include a unit number, so the document was returned to the Respondents. The Applicant acknowledged that the service address for the Applicant that was provided in the Application for Dispute Resolution was incomplete.

The female Respondent stated that on January 09, 2017 the aforementioned document was mailed to the proper service address for the Applicant, via registered mail. The Applicant acknowledged receipt of this document and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present oral evidence and to make submissions regarding jurisdiction.

Issue(s) to be Decided

Do I have jurisdiction over this living arrangement and, if so, is the Applicant entitled to a monetary Order?

Background and Evidence

The Applicant and the Respondents agree that:

- the Applicant moved into the rental unit in October of 2014;
- the Applicant did not sign a tenancy agreement;
- the Applicant agreed to pay \$500.00 in rent to the female Respondent;
- the Applicant agreed to pay the rent to the female Respondent;
- on occasion the rent was paid to the male Respondent;
- the Applicant shared the rental unit with both Respondents and two of the female Respondent's sons;
- the female Respondent's mother frequently stayed in the rental unit, although she had a permanent home in another community;
- the Applicant had his own bedroom;
- the Applicant shared the kitchen and bathroom facilities in the rental unit with the Respondents and the owner, when she was staying there; and
- the Applicant did not live in the rental unit after March 11, 2016.

The female Respondent stated that her mother owns the rental unit; that her mother allows her and the male Respondent to reside in the rental unit; and that neither she, nor the male Respondent, pay rent for this unit. The Applicant did not dispute this testimony.

The female Respondent stated that Applicant to move into the rental unit she did so on her own volition; she was not acting on behalf of her mother; and she did not discuss the living arrangement with her mother. The Applicant did not dispute this testimony.

The female Respondent stated she keeps the rent money paid by the Applicant and that she does not give it to her mother. The Applicant did not dispute this testimony.

The Advocate for the Applicant stated that she believes the Respondents are acting as agents for the female Applicant's mother because they maintained the property on behalf of the mother and because the female Respondent is an heir to the property.

The Advocate for the Applicant argued that section 4(c) of the *Residential Tenancy Act* (Act) does not apply in these circumstances because the owner of the rental unit does not live in the rental unit. The female Respondent argued that this tenancy is not subject to the Act as the Applicant was merely a "roommate".

The Advocate for the Applicant argued that the Applicant and the female Respondent entered into a verbal tenancy agreement and that the Act applies.

Analysis

Before considering the merits of the Application for Dispute Resolution I must determine whether the *Act* applies to this living arrangement. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

The section 1 of the *Act* defines a landlord as follows:

"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.

On the basis of the testimony of the female Respondent who stated that she allowed the Applicant to move into the rental unit on her own volition, that she was not acting on behalf of her mother when she allowed him to move into the unit, and that she did not discuss the living arrangement with her mother, I cannot conclude that the female Respondent was acting on behalf of her mother, who owns the rental unit, when she allowed the Applicant to move into the rental unit. In the absence of any evidence to show that the female Respondent was acting on behalf of the owner when she allowed the Applicant to move into the rental unit, I find that the female Respondent is not a landlord as that term is defined by section 1(a) of the *Act*.

As there is no evidence to show that either Respondent has any legal right to represent the owner of the rental unit or that they have any ownership in the rental unit, is living in the rental unit, I find that neither Respondent is a landlord as that term is defined by section 1(b) of the *Act*.

Residential Tenancy Branch Policy Guideline #9 defines a "license to occupy" as a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month.

This guideline suggests that some of the factors that indicate a person is occupying the rental unit under a “license to occupy” are:

- payment of a security deposit is not required;
- the owner, or other person allowing occupancy, retains access to, or control over, portions of the site;
- the occupier pays property taxes and utilities but not a fixed amount for rent;
- the owner, or other person allowing occupancy, retains the right to enter the site without notice;
- the parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations; and
- the parties have agreed that the occupier may be evicted without a reason, or may vacate without notice.

I find that the Respondents are occupying the rental unit under a “license to occupy. In reaching this conclusion I was influenced by:

- the undisputed evidence that the female Respondent’s mother owns the unit;
- the undisputed evidence that the female Respondent’s mother allows the Respondents to reside in the unit;
- the undisputed evidence that the female Respondent’s mother sometimes stays in the unit;
- the undisputed evidence that the Respondents do not pay rent; and
- my conclusion that the owner of the rental unit is permitting the Respondents to live in the rental unit on the basis of a familial relationship because of generosity, rather than financial gain.

As the Respondents are occupying the rental unit under a “license to occupy”, I find that they are not entitled to possession of the rental unit. Specifically, I find that the owner of the rental unit can require them to vacate the rental unit without providing notice that complies with the *Act*.

As the Respondents are not entitled to possession of the rental unit, I find that neither Respondent is a landlord as that term is defined by section 1(c) of the *Act*.

As there is no evidence to show that either Respondent was formerly a landlord to the Applicant at this rental unit, I find that neither Respondent is a landlord as that term is defined by section 1(d) of the *Act*.

In adjudicating this matter I have placed no weight on the Applicant’s submission that the Respondents were acting on behalf of the owner of the rental unit. This decision is based on:

- the absence of evidence to refute the female Respondent’s testimony that she was not acting on behalf of her mother when she allowed the Applicant to live in the rental unit;

- the undisputed evidence that the Respondents did not collect “rent” money on behalf of the owner of the rental unit; and
- the undisputed evidence that the “rent” money paid by the Applicant was given to the owner of the rental unit.

I find that any evidence that shows the Respondents maintained the property on behalf of the female Respondent’s mother is irrelevant, as that is not inconsistent with a daughter occupying a rental unit on the basis of a familial relationship.

As the Respondents are occupying the rental unit under a “license to occupy”, I find that they did not have the authority to enter into a tenancy agreement with the Applicant. I therefore find that the Applicant was occupying the rental unit as a guest of the female Respondent.

As there is insufficient evidence to show that the Applicant entered into a tenancy agreement with either Respondent, I find that I do not have authority over this living arrangement.

Conclusion

There is insufficient evidence to show that the Applicant entered into a tenancy agreement with either Respondent and I therefore decline jurisdiction in this 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 *Act*.

Dated: January 25, 2017

Residential Tenancy Branch