



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed March 8, 2017 wherein the Applicant requested an Order of Possession and monetary relief based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 2, 2017 (the "Notice"), authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on April 3, 2017. Both parties called into the hearing and were given an 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.

Preliminary Matter—Repondent's Evidence

The Respondent submitted that he sent in 22 pages of evidence to the Residential Tenancy Branch on March 22, 2017. That evidence was not before me, although the Applicant confirmed receipt of this evidence. At the conclusion of the hearing I directed the Respondent and his advocate to resubmit this evidence. I confirm it was then received by the Branch and provided to me. I have reviewed that evidence in making this Decision. No other 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

The Applicant, K.W. testified that he rents a four bedroom home and rents a room to the Respondent, A.D. He claimed that he had the authority from the Landlord to collect rent from the renters in the other three bedrooms.

The Respondent submitted that the Applicant is not his Landlord. The social worker assisting the Respondent submitted that the Applicant is not a Landlord, but shares the home with the Respondent; he further submitted that the Respondent's rent is paid directly to the property owner/Landlord's agent, H.N. Included in the Tenant's evidence was a handwritten letter from H.N. confirming he is the Landlord's agent and collects rent from the Respondent directly. Financial information submitted by the Respondent further confirms the Respondent's rent cheques have been cashed by H.N.

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; rather, Arbitrators must only assume jurisdiction over tenancy disputes which are governed by the *Residential Tenancy Act*.

A Tenant under a tenancy agreement may assign or sublet their tenancy. However, an assignment or sublet assumes the Tenant is *no longer in occupation of the rental unit*. For greater clarity, I reproduce portions of the *Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet*

“ ...

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

...

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant.”

In the case before me, the Applicant continues to reside in the rental unit. Accordingly, the living arrangement may be more accurately described as roommate situation whereby the Respondent, A.D., is an occupant of the rental unit, or a tenant of the landlord/property owner.

Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet provides the following guidance with respect to such situations and reads as follows:

“Occupants/roommates

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 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*.”

The Respondent failed to provide a copy of his tenancy agreement with the property owner/landlord. Accordingly, I am unable to find whether the Respondent is a tenant.

The Applicant submitted that he is the Respondent’s Landlord.

Section 1 of the *Residential Tenancy Act* provides 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;

As the Applicant is a “tenant occupying the rental unit”, I am unable, based on the evidence before me to find that the Applicant, K.W., meets the above definition of Landlord.

Based on the evidence before me, I find that the Applicant is not a Landlord and therefore not able to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Accordingly, I decline jurisdiction to hear this dispute.

Conclusion

The Applicant, K.W., is not a Landlord as defined by the *Residential Tenancy Act*. The parties are more accurately described as roommates and as such the *Residential Tenancy Act* does not apply to the dispute between the two of them. I therefore decline jurisdiction.

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: April 04, 2017

Residential Tenancy Branch