



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicants to have the respondent comply with the Act, to suspend or set condition on the respondent's right to enter the rental unit and to provide services or facilities required by the tenancy agreement or law.

The Applicant P-A, attended the hearing. As the Respondent did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the Respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Applicant testified the Application for Dispute Resolution and Notice of Hearing served in person on October 21, 2017. I find that the Respondent has been duly served in accordance with the Act.

Preliminary issue

The first issue that I must decide is whether the Act has jurisdiction over this matter in order to proceed with the application.

The Applicant P-A stated that they entered into a tenancy agreement to rent a room from the tenant who has their own agreement with the landlord the owner of the property. The Applicants do not have any obligation to the owner to pay rent as they are not co-tenants on the tenancy agreement.

The Applicant P-A acknowledged that the respondent is not the owner of the property and is not an agent for the landlord. The applicants stated that they rented the premises from the tenant and the tenant is currently living at the premises and sharing the facilities.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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 respondent under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

In this case, the Respondent is a tenant who has tenancy agreement with the owner of the rental premise, and that agreement gives them exclusive possession of the premises. Therefore, I find the Respondent is not a landlord as defined by the Act. Rather, I find the Respondent is a tenant who occupies the rental premises.

Section 13 of the Residential Tenancy Policy Guidelines states:

Where a tenant allows a person who is not a tenant to move into the premises and share rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, the Respondent allowed another person under an agreement to move into the rental premises. A new tenancy agreement with the owner of the rental premises to have the applicants added as co-tenants was never entered into. Therefore, I find the Applicants are not tenants as defined under the guideline. Rather, I find the Applicants are occupants and have no legal rights under the *Residential Tenancy Act*.

As this is a dispute between a tenant and an occupant and not a dispute between a landlord and tenant, I find that there is no jurisdiction for the applicants to proceed with their application and I dismiss the application without leave to reapply.

Conclusion

The Applicants' application is dismissed for lack of 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: January 03, 2018

Residential Tenancy Branch