



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Applicants under the *Residential Tenancy Act* (the “Act”) seeking to dispute a rent increase and cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The hearing was convened by telephone conference call and was attended by the Applicants and the Respondent, all of whom provided affirmed testimony. Both parties were given the opportunity to make submissions and to present their evidence orally and in written and documentary form.

At the outset of the hearing I questioned the parties about the living accommodation and the nature of the rental agreement. While both parties agreed that there is only a verbal agreement in place and that the Applicants moved into a self-contained basement suite in May of 2016, the Respondent stated that he is in fact a tenant of the property and not a Landlord under the *Act*. The Respondent testified that he has a written tenancy agreement with the owner of the property, C.C., to rent the entire home, including the self-contained basement suite. The Respondent stated that although the owner is aware he sometimes rents out the basement suite to help with his rent; he is not authorized to act as an agent for the owner and does not rent out the basement suite on behalf of the owner. Instead, the Respondent stated that he rents out the basement suite to the Applicants, who are actually occupants, to assist in covering the rent he owes under his tenancy agreement with the owner.

The Tenants stated that they believed the Respondent to be the Landlord at the time they entered into the verbal rental agreement and that they have been paying rent to him since May of 2016. Further to this, they stated that the Respondent completed a form in order for them to obtain government benefits in which he stated he was the Landlord.

Based on the above, I find that I must determine whether I have the jurisdiction to hear this matter under the *Act* prior to considering the merits of the Application. Section 1 of the *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 1 defines a landlord as the owner of the rental unit, the owner’s agent, or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the *Act*, the tenancy agreement or a service agreement.

Although the Applicants argued that the Respondent is a landlord as he entered into a verbal rental agreement with them and they pay him rent, the Respondent testified that he is not the owner of the rental unit, is not authorized as an agent for the owner, and does not permit occupation, exercise powers, or perform duties on behalf of the owner. As the Applicants did not provide any documentary or other evidence to establish that the Respondent is the owner of the rental unit, the owner's agent, or another person who, on behalf of the owner [emphasis added], permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the *Act*, the tenancy agreement or a service agreement; I am therefore not satisfied that the Respondent meets the definition of a landlord under the *Act*.

The Residential Tenancy Branch (the "Branch") only has the jurisdiction to hear tenancy matters between landlords and tenants as defined by the *Act*, not all matters between two or more parties. As stated above, based on the evidence and testimony before me, I am not satisfied that the Respondent is a landlord under the *Act*. Policy Guideline # 14 states that where a tenant allows a person who is not a tenant to move into the premises and share the 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 the tenant. Based on the evidence and testimony before me, it appears that the Respondent has a tenancy agreement with the owner to rent the entire property and that he subsequently rents out the basement suite to the Respondents to help pay the rent. Based on the above and pursuant to Policy Guideline #14, I find, on a balance of probabilities, that the Applicants are in fact occupants of the rental unit and not tenants.

Based on the above, I am not satisfied that I have the jurisdiction to hear this matter and I therefore decline to hear this matter for lack of jurisdiction. I encourage the parties to seek independent legal advice in relation to 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: June 14, 2018

Residential Tenancy Branch