



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

On May 15, 2018, the Applicant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to dispute a one month notice to end tenancy for cause and requested an order to have the Landlord comply with the legislation.

The Applicant attended the conference call hearing and was affirmed to be truthful in his testimony. 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 that the Application for Dispute Resolution and Notice of Hearing documents were personally served on the Respondent. I find that the Respondent had been duly served in accordance with sections 89 and 90 of the *Act*.

The Applicant was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Does the *Residential Tenancy Act* apply to this matter?
- If so, is the Notice to end tenancy valid?

Background and Evidence

Jurisdictional issues were brought up at the outset of the hearing. The Applicant testified that he was a tenant under the original tenancy that was in the name of the Respondent. The Respondent and the Applicant lived in the rental unit together, each with their own room and they shared a bathroom and kitchen.

The Applicant agreed that the Respondent, who had rented out a room to him, was a tenant of the property management company. The Applicant confirmed that the Respondent remained in the rental unit while he resided there.

Analysis

I refer to the *Residential Tenancy Branch – Policy Guideline 19 – Assignment and Sublet*:

“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 Act defines a Landlord as:

"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;

In this case, as the Respondent remained in the rental unit with the Applicant and was the original tenant of the Landlord, I find that the Applicant and the Respondent were roommates. In addition, if the original tenant remains in the rental unit, a sublet tenancy arrangement is not established. The *Residential Tenancy Act* does not apply to roommates/occupants, and therefore I decline jurisdiction.

Although the *Residential Tenancy Act* does not apply to this matter, the parties may further pursue this matter through a court of competence jurisdiction.

Conclusion

The Applicant was a roommate of the Respondent and is not considered a tenant. Therefore, the *Residential Tenancy Act* does not apply to this matter, and I 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: July 10, 2018

Residential Tenancy Branch