



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNRL-S, OPR, FFL  
                                 CNR, LRE, MT

This hearing dealt with an Application for Dispute Resolution (the "Application") and an Amendment to the Application for Dispute Resolution (the "Amendment") filed under the *Residential Tenancy Act* (the "*Act*") by V.H. who purported to be the landlord. In the Application V.H. sought an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), authorization to withhold the security deposit, compensation for unpaid rent and utilities and recovery of the filing fee.

This hearing also dealt with an Application filed under the *Act* by K.C. who purported to be the tenant, seeking more time to file her Application seeking cancellation of the 10 Day Notice, cancellation of the 10 Day Notice, and an order restricting or setting conditions on V.H.'s right to enter the rental unit.

The hearing was convened by telephone conference call and was attended by V.H. and K.C., both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application, the Notice of Hearing or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, I refer only to the relevant facts and issues in this decision.

At the outset of the hearing K.C. stated that she has recently discovered that V.H. is not the owner of the property and that he is not in fact the landlord. V.H. confirmed that he is a tenant and not the owner of the property and does not have authority to rent out the property from the owner. However, he stated that he is still a landlord as he has a sublease agreement with K.C.

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 Applications or the Amendment. 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;

Although there is a copy of a tenancy agreement in the documentary evidence before me listing K.C. as a tenant and V.H. as a landlord, V.H. acknowledged that he is not the owner of the property and does not have legal authority to act as an agent for the owner or to permit occupation of the rental unit under a tenancy agreement. In fact, V.H. stated that approximately one week ago the owner of the property, who is his landlord, discovered that he has rented out the property and has served him with a One Month Notice to End Tenancy for Cause (the "One Month Notice") as a result. Based on the above, I find that V.H. does not meet the definition of a "landlord" under the *Act*.

Although V.H. stated that he has a sublease agreement with K.C. and therefore has rights under the *Act* as a landlord, I do not agree. Section 1 of the *Act* defines a sublease agreement as follows:

**"sublease agreement"** means a tenancy agreement

- (a) under which
  - (i) the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and
  - (ii) the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and
- (b) that specifies the date on which the tenancy under the sublease agreement ends;

In the hearing V.H. stated that he has a one year fixed-term tenancy agreement to rent an entire single family home which consists of two floors. V.H. stated that the tenancy began April 10, 2018, and is set to end in April of 2019. V.H. stated that at the time he rented the home, he planned and had approval from the owner to house home-stay students; however, due to the age of the home, he was not permitted to house home-stay students by the applicable organizations. As a result, V.H. stated that he rented a portion of the lower floor to K.C. which included a bathroom with a shower and a hot plate for cooking. Although the parties disputed

the end date of K.C.'s tenancy agreement, ultimately they agreed that K.C. moved into the lower portion of the home on approximately April 28, 2018. The tenancy agreement in the documentary evidence before me states that K.C. has a fixed-term tenancy agreement with V.H. from

May 8, 2018 - May 8, 2019. In reviewing this documentation I note that the end date of K.C.'s fixed term is after the end date of V.H.'s fixed term for the rental unit. The tenancy agreement in the documentary evidence before me also does not contain a clause requiring K.C. to move out at the end of the fixed-term or state that it is a sublease agreement. Based on the above, I find that there is no sublease agreement as defined under section 1 of the *Act* between the parties.

Policy Guideline 27 states that the Legislation does not confer upon the Residential Tenancy Branch (the "Branch") the authority to hear all disputes regarding every type of relationship between two or more parties. It also states that the Branch only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations. Further to this, section 59 of the *Act* states that the director may refuse to accept an application for dispute resolution if, in the opinion of the director, the application does not disclose a dispute that may be determined under the *Act*. As stated above, I find that there is no sublease agreement between the parties as defined under section 1 of the *Act* and that V.H. also does not meet the definition of a landlord under the *Act*. As a result, I am satisfied that this is not a landlord and tenant dispute over which I have jurisdiction under the *Act* and I 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: October 12, 2018

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Residential Tenancy Branch