



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, AAT, LAT, MNDCT, OLC

Introduction

On November 22, 2018, the Applicants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") to dispute a rent increase, for an order to allow access to the rental unit for the Tenant or their guests, to request authorization to change the locks, to suspend or set conditions on the Landlords' right to enter the rental unit, for a monetary order for damages or compensation under the act, and for an order for the Landlord to comply with the *Act*. The matter was set for a conference call.

Both Respondents and both Applicants attended the hearing and were each affirmed to be truthful in their testimony. The Respondents and Applicants were provided with the opportunity to present their 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.

Preliminary Matter - Jurisdiction

The Respondents brought up jurisdiction at the outset of the hearing. The Respondents claimed that this living arrangement was not a residential tenancy and therefore did not fall under the jurisdiction of the *Residential Tenancy Act*.

Issue to be Decided

- Does the *Residential Tenancy Act* apply to this matter?

Background and Evidence

Both parties agreed that the Applicants moved into the rental unit on September 1, 2018, and that they paid the Respondents \$800.00 a month. Both parties agreed that the Applicants had use of part of the basement of the rental unit, consisting of; a bedroom, a living area, a bathroom, and a small kitchenette. Both parties agreed that there was no written tenancy agreement.

The Applicants testified that they were renting a separate rental unit from the Landlords who lived upstairs. The Applicants testified that their rental unit was a one bedroom, with a small living area, small kitchen and separate entrance.

The Respondents testified that they are the Tenants of the Landlord ("owner"), and that they had allowed the Applicants to move in short term to help them out, and that this living arrangement was never intended to be a residential tenancy. The Respondents testified that they only provided a part of the basement to the Applicants and that they retain full access and use of the basement themselves.

The witness P.F. testified that he was "told to say, that the suite was a self-contained unit" The witness P.F. also testified that he visited the Applicants 10 times at the rental unit and that he had seen only one door to the rental unit and that the one door led to the outside.

The Respondents also testified that there were two doors to the basement, one that leads outside and one that leads to the upstairs area of the rental property. The Respondents testified that their Landlord had no knowledge that they had allowed the Applicants to live with them for a short time.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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;

I have reviewed the testimony and documentary evidence provided by both parties, and I find that the Respondents are the original tenants of the Landlord/Owner and that the Respondents lived in the rental unit with the Applicants.

During the hearing, I heard contradictory testimony from both parties regarding the area of the rental unit occupied by the Applicants and whether or not that area had been a separate self-contained rental unit.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the Applicants have the burden of proving that they were renting a separate self-contained rental unit from the Respondents.

I have carefully reviewed the witness testimony and documentary evidence provided by the Applicants, and I find that they have not provided sufficient evidence to prove to me that they had rented a separate self-contained rental unit from the Respondents. In the absence of evidence to prove that there were two separate self-contained rental units on the rental property, I find that the Applicant and the Respondent lived in the same rental unit and that they were roommates.

As per the policy guideline noted above, if the original tenant, the Respondents in this case, remains in the rental unit, a sublet tenancy arrangement is not established, and the *Residential Tenancy Act* does not apply; 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 competent jurisdiction.

Conclusion

The Applicants were roommates of the Respondents and are 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: December 19, 2018

Residential Tenancy Branch