



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, ERP, MNDCT, OLC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Applicant in which the Applicant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the landlord to make repairs to the rental unit; for an Order requiring the landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to cancel a Notice to End Tenancy for Cause.

The Applicant stated that on January 10, 2019 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Respondent. The Respondent stated that these were received on January 11, 2019 or January 12, 2019.

Issue(s) to be Decided:

Is the Applicant entitled to a monetary Order?

Is there a need for an Order requiring the landlord to make repairs to the rental unit or for an Order requiring the landlord to comply with the *Act* or the tenancy agreement?

Should the Notice to End Tenancy for Cause be set aside?

Background and Evidence

The Applicant and the Respondent agree that:

- the Applicant moved into this rental unit in late June of 2018;
- the Applicant agreed to pay rent of \$650.00 to the Respondent;
- the Applicant and the Respondent share a kitchen and a bathroom; and
- the Respondent does not own the rental unit.

The Respondent stated that his landlord knows he sublets a portion of the rental unit, but that he is not acting on behalf of the landlord when he does so. He stated that the parties are roommates and he has previously been told this living arrangement is not covered by the *Residential Tenancy Act (Act)*.

Analysis

Before considering the merits of the Application for Dispute Resolution I must first determine whether this application has jurisdiction under the *Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

The undisputed evidence is that the Respondent is a tenant in this rental unit and that he allows the Applicant to reside in the unit with him. There is no evidence that the Respondent was acting on behalf of his landlord when he allowed the Applicant to move into the rental unit or that he is representing his landlord's interests by allowing the Respondent to reside there.

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;

As there is no evidence to show that the Respondent is the owner of the rental unit, the owner's agent, or another person who is acting on behalf of the owner, I find that the Respondent is not a landlord as defined by section 1(a) of the *Act*.

As there is no evidence to show that the Respondent is an heir, assign, personal representative or successor in title to a person referred to in section 1(a) of the *Act*, I find that the Respondent is not a landlord as defined by section 1(b) of the *Act*.

As the evidence shows that the Respondent is a tenant who is occupying the rental unit, I find that he is not a landlord as defined by section 1(c) of the *Act*.

As there is no evidence to show that the Respondent is a former landlord of this rental property, I find that the Respondent is not a landlord as defined by section 1(d) of the *Act*.

I find that the legislation has contemplated this type of circumstance and in the absence of evidence of a joint tenancy, the *Act* does not apply. Therefore, I find that neither the Applicant nor the Respondent is governed by this *Act*.

This decision is consistent with Residential Tenancy Branch Guideline #19, which reads, in part:

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 use of the word 'sublet' can cause confusion because under the *Act* it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the *Act*, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the *Act* apply to the parties. If there is no landlord/tenant relationship, the *Act* does not apply.

Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

Conclusion

As the *Act* does not apply to these parties, I do not have jurisdiction in this matter and I must dismiss the Application for Dispute Resolution.

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: February 04, 2019

Residential Tenancy Branch