



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the Applicant seeking remedy under the *Residential Tenancy Act* (“Act”) to cancel a 1 Month Notice to End Tenancy for Cause, for an order directing the respondent to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The applicant and the respondent attended the teleconference hearing. The applicant and respondent were affirmed and the hearing process was explained to the parties. The applicant and the respondent did not raise any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The applicant and respondent confirmed their email addresses at the outset of the hearing. They also confirmed their understanding that the decision would be emailed to both the applicant and respondent.

The first issue that I must decide is whether the Act has jurisdiction over the applicant and the respondent in order to proceed with the application.

The respondent testified that he is a tenant with a tenancy agreement with the owner of the property (“landlord”). The applicant and respondent state they both reside in the home and that the applicant rents the master bedroom from the respondent. The respondent confirmed that he rents out various bedrooms in the home and that the landlord is aware he is doing so. The respondent pays rent to the landlord and the applicant does not pay rent to the landlord, the applicant pays rent to the respondent.

There is no evidence that the applicant is a co-tenant before me. The agreement between the parties appears to be a roommate agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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 respondent under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

There is no dispute that the respondent is a tenant who occupies a portion of the home, and rented the master bedroom room to the applicant to help pay the overall rent. Therefore, I find the respondent is a tenant under the *Act* and that the applicant is a roommate of the tenant.

Residential Tenancy Branch Policy Guideline 13 states:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share 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 a tenant.

In this case, the respondent allowed the applicant to move into the premises and share rent, under an agreement. A new tenancy agreement with the owner of the rental unit to have the respondent added as a co-tenant was never entered into. Therefore, I find the applicant is an occupant as defined under the guideline and not a tenant and has no rights or obligation under a tenancy agreement.

As this is a dispute between an occupant applicant and a tenant respondent and not a dispute between a tenant and a landlord, I find that there is no jurisdiction for the applicant to proceed with their application. I dismiss this matter due to lack of jurisdiction under the *Act*.

Conclusion

The applicant's application is dismissed for lack of jurisdiction under the *Act*.

The applicant is an occupant and not a tenant as defined under the *Act*.

I do not grant the filing fee as a result.

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 28, 2019

Residential Tenancy Branch