



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This teleconference hearing was scheduled in response to an application under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for an Order for the landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement.

The Applicant and Respondent were both present for the teleconference hearing. The parties were affirmed to be truthful in their testimony. The Respondent confirmed receipt of the Notice of Dispute Resolution Proceeding package and although she did not receive any evidence from the Applicant, confirmed that she had a copy of the letter that she sent that was submitted as the Applicant’s evidence. The Applicant confirmed receipt of the Respondent’s evidence.

As questions of jurisdiction were raised, testimony was accepted from both parties regarding jurisdiction and will be addressed below.

Preliminary Matters – Jurisdiction

The Applicant stated that he moved into the home in March 2018 and that he pays \$200.00 per month to the Respondent. He stated that there is no written tenancy agreement and that no security deposit was paid. He described the unit where he resides as a lower level unit with access to the main part of the home. He also noted that there is separate outdoor access to the living space. The Applicant stated that the Respondent is not the owner of the home. However, he stated his position that this was a sublease agreement.

The Respondent testified that the Applicant moved in around April 2018 and was provided approximately 3 months of free rent. Following that, the Respondent stated that the Applicant began paying her \$200.00 per month. She noted that the Applicant uses the shower and toilet in the main level of the home. The Respondent further testified that she is not the owner of the home and instead is a tenant of the home. She stated that she has a tenancy agreement with the owners to rent the entire house. She stated her position that the Applicant is a roommate or occupant.

I refer to *Residential Tenancy Policy Guideline 19* which states the following regarding occupants and 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.

Based on the testimony of both parties, I accept that the Respondent has a tenancy agreement with the owners of the home and that she rents out a space within the rental unit to the Applicant. It seems that the Applicant does not have a tenancy agreement with the owners/landlords and instead has an arrangement with the original tenant to whom he pays a monthly amount.

I also note that this is not a sublease agreement. As explained in *Policy Guideline 19*, in a sublease agreement, the original tenant moves out of the rental unit and transfers their rights under the tenancy agreement to the subtenant for a period of time before moving back in. In this matter, I find that the Respondent has a tenancy agreement with the Landlords and is currently residing in the home along with the Applicant who has rented a space in the home.

Therefore, I find that this is not a landlord/tenant relationship and instead is that of roommates or occupants, regardless of whether there is separate outdoor access to the

space where the Applicant resides. As such, I find that I have no jurisdiction over this matter as the *Residential Tenancy Act* does not apply.

Conclusion

The *Residential Tenancy Act* does not apply to this matter and therefore 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 11, 2019

Residential Tenancy Branch