



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the Applicant's Application for Dispute Resolution, made on May 31, 2019 (the "Application"). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Applicant and the Respondent attended the hearing at the appointed date and time and provided affirmed testimony.

The Applicant testified that he served the Application and documentary evidence package to the Respondent by registered mail, however, could not recall what date the package was sent. The Respondent confirmed that he received the Applicant's Application and documentary evidence package on June 4, 2019. The Respondent testified that he attempted to serve his evidence to the Applicant in response to the Application, however, when he attended the dispute address where the Applicant had resided during the course of the tenancy, he learned that the Applicant had been evicted and no longer resided in the residence.

The Respondent stated that he managed to find out where the Applicant moved to and served his documentary evidence to the Applicant on September 6, 2019 by posting it to the Applicant's door. The Applicant confirmed receipt.

The Respondent stated that the Applicant had purported himself as being the home owner during the tenancy and that it now appears as though he is a Tenant under a separate agreement with the true owner of the residence.

The Applicant stated that he was part owner, before stating that he leases the residence from the owner. The Applicant testified that he has a separate tenancy agreement between him and the owner. The Applicant stated that he is not an Agent for the owner and that he has formed a separate tenancy agreement with the respondent.

Preliminary Matters - Jurisdiction

Section 1 of 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;*

According to the Residential Tenancy Policy Guideline 13 (the "Policy Guideline"):

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

According to the Policy Guideline 19;

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. If there is no landlord/tenant relationship, the Act does not apply.

In light of the above, I find that the Applicant does not meet the definition of a Landlord because he is not the owner of the rental unit, or an Agent who on behalf of the owner permits occupation of the rental unit under a tenancy agreement. According to the definition, a Landlord must be a person other than a Tenant occupying the rental unit.

I further find that the Respondent is not a Tenant with full rights under the *Act* because he did not enter into a tenancy agreement with the owner of the rental property. He is an occupant of the Applicant with no rights or responsibilities under the *Act*.

I find that the *Act* does not apply to the living arrangement and therefore I have no jurisdiction to hear the dispute. The Application for Dispute Resolution is dismissed without leave to reapply.

Conclusion

I decline to proceed due to a lack of jurisdiction, and the Application is dismissed without leave to reapply. The Applicant should seek legal advice from their lawyer as to how to resolve this dispute.

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: September 10, 2019

Residential Tenancy Branch