



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, LRE, MNRT, MT, OLC

Introduction

This hearing dealt with the Applicant's Application for Dispute Resolution, made on September 16, 2019 (the "Application"). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for an emergency repair;
- to cancel a 10 Day Notice to End Tenancy;
- to cancel a One Month Notice for Cause;
- an order granting more time to cancel a notice to end tenancy.
- an order to restrict the respondent's right to enter; and
- an order that the respondent comply with the Act.

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

At the start of the hearing, the Respondent stated that she does not feel as though the *Act* applies to their living situation. The respondent stated that she has a tenancy agreement with the owner of the home and has a separate tenancy agreement with the Applicant who rents a portion of the rental property from the Respondent.

In response, the Applicant confirmed that she rents her own portion of the rental property from the respondent and that they do not share any common areas together. As such, the Applicant feels as though the *Act* does apply to the living situation.

Preliminary Matters - Jurisdiction

Section 1 of the Act defines a Landlord as: (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 Respondent does not meet the definition of a Landlord because she is not the owner of the rental unit, rather she is a Tenant to the Landlord and has created a separate tenancy with an occupant. 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 she did not enter into a tenancy agreement with the owner of the rental property. She is an occupant of the Respondent 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: October 18, 2019

Residential Tenancy Branch