



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC CNR OLC

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Ten Day Notice**") pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**One Month Notice**") pursuant to section 47; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

All parties attended the hearing. Landlord PHS was represented by manager of outreach service ("**CF**") and its housing outreach worker ("**SM**").

### Preliminary Issue - Jurisdiction

In their application for dispute resolution, the applicant tenants ("**AM**" and "**KM**") named three parties as respondent landlords: Respondent landlord "**PHS**"; respondent landlord "**PD**"; and respondent landlord "**JH**".

At the outset of the hearing, CF raised the issue of whether PHS was properly a landlord under the Act. In his written submissions JH raised similar concerns.

The residential property (the "**House**") in question is a single-detached house owned by JH. JH rents the entire house to PD, by way of a written tenancy agreement. JH and PD testified that PD rents rooms out in the House to supplement his income. The applicant tenants testified that eight people live in the House, including themselves and PD, and that all eight occupants share a single kitchen and a single bathroom.

PHS is a placement agency, which located a room available to rent in the House and made the applicant tenants aware of it. KM met with PD shortly thereafter and agreed to rent the room. No written agreement was signed. KM testified that he understood that he and AM were renting the room from JH, and that PD was JH's property manager. PD and JH denied this.

The parties gave conflicting evidence as to the timing but agree that the tenants met with JH (either just before or just after the applicant tenants moved into the House). JH testified, and PD agreed, that JH met with them in order to determine if PD may rent a room to them. JH and PD both testified that they were both worried about the possibility of the applicant tenants damaging the House. JH testified that he believed he had a right to have some form of approval over who the room could be rented to, pursuant to the tenancy agreement between him and PD. Although not referred to by either JH or PD, I note that the standard form tenancy agreement (which PD and JH used to establish PD's tenancy) contains the following term:

11(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the Residential Tenancy Act.

The applicant tenants moved into a room in the house and testified that they shared both a kitchen and a bathroom with PD while they lived there. They did not pay rent themselves, rather PHS received funds from the ministry, and paid money directly to PD. The applicant tenants testified that a security deposit was also paid by the ministry, via PHS, although they were not sure who it was paid to. PD confirmed the deposit was paid to him.

JH repeatedly testified that he had no contractual relationship with the applicant tenants, that they were brought on by PD, and that his only tenant was PD.

PD testified he used the income received from renting the room to the applicant tenants (and other occupants of the House) to supplement his income. PD denied that the applicant tenants were his "tenants", rather he repeatedly characterized them as his "roomies".

The applicant tenants insist that JH is their landlord and PD is his manager. They were unable to articulate on what basis PHS was their landlord. The applicant tenants testified that JH conducted monthly inspections of the House. JH acknowledged that he

has inspected the House, to make sure that PD and the occupants that PD has rented room out to are not damaging the House. No evidence was provided whether or not JH has ever attempted to have an occupant removed or have PD take any steps with regard to a specific occupant.

The applicant tenants submitted that because they paid a security deposit a tenancy automatically arises.

## **Analysis**

Section 2 of the Act states:

### **What this Act applies to**

2(1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Section 1 of the Act sets out the following definitions:

**"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;

[...]

- (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;

**"rental unit"** means living accommodation rented or intended to be rented to a tenant;

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

So, I must determine if each of the respondent landlords is a “landlord” within the definition of the Act, so that I might determine if a tenancy agreement exists between the applicant tenants and one or more of the respondent landlords.

1. PHS

The applicant tenants were not able to articulate a basis for why PHS ought to be named a landlord. Based on the evidence provided at the hearing, I understand PHS to be a placement agency. I do not find that it permits the occupation of the House or that it exercises the powers or performs the duties of a landlord under the Act.

As such, I find that PHS is not a landlord, cannot therefore be a party to a tenancy agreement, and that I have no jurisdiction under the Act to adjudicate any dispute between the applicant tenants and PHS.

2. JH

There is no dispute that JH is a landlord of PD. However, this does not mean that he is necessarily a landlord of the applicant tenants.

I find that there is no written agreement between the applicant tenants and JH. I find that any rent for use of the room the applicant tenants have paid on their behalf is paid to PD, not JH. I find that the applicant tenants have not had a security deposit paid to JH on their behalf, but rather paid to PD.

Based on the testimony of the parties, I find that the JH has conducted inspections of the House, including the room that the applicant tenants have rented, and met with the applicant tenants as part of a screening process. I have been presented with no evidence to suggest that he has caused an individual occupant to be evicted from the House as a result of his inspections of the House. Based on JH’s testimony, I understand that JH believes he had some authority to authorize to whom PD may rent rooms in the House.

Section 1 of the Act contemplates three distinct scenarios under which a person may be a “landlord” that are applicable to the present situation:

- 1) the owner of the rental unit permits occupation of the rental unit under a tenancy agreement;
- 2) the owner of the rental unit exercises powers and performs duties under this Act, the tenancy agreement or a service agreement; or

- 3) a person, other than a tenant occupying the rental unit, who:
  - a) is entitled to possession of the rental unit, and
  - b) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit.

There is insufficient evidentiary support to the proposition that a tenancy agreement exists between the applicant tenants and JH. No written agreement exists. JH collects no rent from them (all rent money and deposits is paid to PD).

Similarly, there is insufficient evidentiary support to the proposition that JH is entitled to possession of the House. He and PD are parties to a rental agreement whereby PD is entitled to exclusive possession of the House.

We are then left to determine if JH has exercised power or performed duties of a landlord under the Act (as they relate to the applicant tenants). The types of conduct alleged by the applicant tenants which may fall into this category are: JH's inspections of the House; and JH's screening of the applicant tenants.

I do not find that these two actions amount to the exercise a landlord's power under the Act as it pertains to the applicant tenants.

As PD's landlord, JH is entitled to inspect the House for any reasonable purpose, pursuant to section 29(b) of the Act. I find that it was reasonable for JH to regularly inspect the House for the purpose of determining whether the PD's roommates (including the applicant tenants) were causing damage to the House. Such damage may have led to JH ending tenancy of PD (per section 47). I note that Policy Guideline specifically states that "inspecting the [rental unit] for damage" is a "reasonable purpose" for entry.

I find that JH's screening of PD's roommates does not amount to an exercise of a landlord's power under the Act. The standard form tenancy agreement (which was used by PD and JH, and the terms of which are required to be contained in any tenancy agreement pursuant to section 13(2)(a) of the Act) states that "if the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy."

I find that implicit in this term is the authority of the landlord to take reasonable steps to ensure that the number of occupants in the rental unit does not adversely affect him. I

find that, without such authority, the provision that the landlord may “discuss the issue” with the tenant would be devoid of any substantive meaning.

I find that implementing a screening procedure for new roommates is a reasonable step for JH to take to ensure that the number of roommates in the House does not adversely affect him (that is, pose a danger to his property).

For these reasons, I find JH is not the landlord of the applicant tenants. Therefore, I have no jurisdiction under the Act to adjudicate any dispute between the applicant tenants and JH.

### 3. PD

Policy Guideline 27 states:

#### **DISPUTES BETWEEN TENANTS AND ROOMMATES**

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

The basis for this can be found in the definition of “landlord” in section 1 of the Act (see above). PD is not the owner of the House. PD is a tenant of JH who is occupying the House. As such, PD is explicitly excluded from being a landlord pursuant to subsection (c) of the definition of “landlord” at section 1 of the Act.

As the Act defines tenancy agreement as an agreement between a landlord and a tenant, and as PD is not a landlord, the arrangement between PD and the applicant tenants whereby the applicant tenants rented a room in the House is not a “tenancy agreement” as defined by the Act.

Similarly, the Act requires that a “rental unit” must be rented or be intended to be rented by a tenant. I find that a “tenant” can only rent a living accommodation from a “landlord” by way of a “tenancy agreement”. As I have already found that PD is not a “landlord” and that the agreement between PD and the applicant tenants is not a “tenancy agreement”, I cannot find that the room rented by the applicant tenants is a “rental unit” as defined by the Act.

As such, I find that the Act does not apply to the dispute between PD and the applicant tenants.

I must also address the applicant tenants' claim that since they paid a security deposit a tenancy must arise. The applicant tenants did not cite an authority for this proposition, but I believe they may be referring to Policy Guideline 9, which considers whether an arrangement is a "tenancy agreement" or a "license to occupy" (the significance of this distinction is only relevant to case to which the *Manufactured Home Park Tenancy Act* applies). This guideline contains factors which may be considered in determining whether the agreement is a tenancy agreement, among them where or not a security deposit is required.

Policy Guideline 9 holds that not requiring the "payment of a security deposit" "may weigh against finding a tenancy" agreement exists. The inverse of this is, of course, that requiring a security deposit is a factor weighing against the agreement being a license to occupy.

Policy Guideline 9 does not apply to the case at hand. The issue in this case is not whether the applicant tenants occupied a rental unit by virtue of a tenancy agreement (to which the MHPTA applies) or a license to occupy (to which the MHPTA does not apply). The issue at hand is whether any of the respondents to this application are "landlords" under the Act.

For the reasons stated above, I find that none of the respondents are "landlords" as defined by the Act, and the Act grants the Residential Tenancy Branch no jurisdiction to adjudicate claims between the applicant tenants and any of the respondents.

Accordingly, I dismiss the application in its entirety, without leave to reapply.

I note that this necessarily means that any notices to end tenancy issued pursuant to the Act by PD are of no force and effect, as only a landlord (as defined under the Act) may issue such notices.

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: November 20, 2019

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Residential Tenancy Branch