



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR DRI MNDCT MT RP

Introduction

This hearing dealt with the Applicant's Application for Dispute Resolution, made on September 10, 2019 (the "Application"). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a One Month Notice to End Tenancy for Cause dated September 27, 2019 (the "One Month Notice");
- an order to cancel a 10 Day Notice for Unpaid Rent dated September 27, 2019 (the "10 Day Notice");
- to dispute a rent increase;
- a monetary order for damage, compensation or loss;
- more time to submit an application to cancel a notice to end tenancy; and
- an order for regular repairs.

The Applicant, the Applicant's Advocate E.N., 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 he is not the Landlord, but that he is a Tenant of the Landlord who owns the rental property. The Respondent stated that he has one agreement between him and the owner of the rental property. The Respondent stated that he has decided to rent out the basement suite of the rental property to the Applicant with a separate verbal agreement between them. The Respondent confirmed that the Applicant is not part of the original agreement between the Respondent and the owner of the rental property.

The Applicant confirmed that she is friends with the Respondent and that he is not the owner of the rental property. The Applicant stated that they had a verbal agreement

between them that she would occupy the basement suite of the rental property. The parties agreed that the Applicant did not pay a security deposit.

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 Respondent 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 Applicant 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: November 19, 2019

Residential Tenancy Branch