



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHRISTOPHER MOTTERSHEAD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with the Applicant's Application for Dispute Resolution, made on August 21, 2019 (the "Application"). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order for the Respondent to return the Applicant's 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.

Preliminary Matters – Jurisdiction

At the start of the hearing, the issue of surrounding jurisdiction was raised between the parties. The parties agreed that the Respondent is not the owner of the rental unit, as his parents purchased the rental unit and have formed a verbal tenancy agreement with the Respondent. The Respondent then rented a room in the rental unit to the Applicant. The Respondent and the Applicant have a separate tenancy agreement between them.

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.

According to Policy Guideline 27;

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.

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 he did not enter into a tenancy agreement with the owner of the rental property. He 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: December 16, 2019

Residential Tenancy Branch