



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, MNDCT, LRE, FFT**

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- An order that a landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- A monetary award for damages and loss pursuant to section 67;
- An order restricting the landlord's right to enter the rental unit pursuant to section 70; and
- Authorization to recover the filing fee pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. I find that both parties were duly served with respective materials pursuant to sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Does this matter fall under the jurisdiction of the Residential Tenancy Branch?
If so, is the applicant entitled to any of the relief sought?

Background and Evidence

The parties agree on the following facts. This tenancy began in December 2019. The rental unit is a suite in a detached house. The respondent RR is not the owner of the property nor do they act as agent for the property owners. The registered owner of the property is a corporate entity whose controlling parties are the respondents JH and DH.

The respondent RR has a tenancy agreement with the corporate owner of the property, entered on September 2008. The respondent RR resides at the rental address and rented out a portion of the rental property to the applicant. The respondent RR collects rent from the applicant but does so on their own behalf and not as agent for the corporate owner or the respondents JH and DH. The respondents JH and DH testified that they have no involvement in any agreement between RR and the applicant. RR testified that they continue to reside in the rental property and therefore this matter is outside of the jurisdiction of the Branch.

The applicant submits that because they have exclusive use of a kitchen and bathroom in their suite they believe this is a tenancy that falls under the jurisdiction of the *Act* and the Branch.

Analysis

Landlord is defined in section 1 of the *Act* as:

- (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...

Residential Tenancy Policy Guideline 19 provides that a sublet is where the original tenancy agreement remains in place and the tenant and the sub-tenant enter into a new sub-lease agreement. The tenant effectively becomes the "landlord" of a new sub-lease tenancy agreement.

Guideline 19 further delineates the distinction and provides that, "unless the tenant is acting as an 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*."

In the case at hand, based on the undisputed evidence provided, the respondent RR was not acting as agent of the property owners. The respondent RR was residing in the

rental building at all material times. Accordingly, I find that the applicant is considered an occupant/roommate and the *Act* does not apply to the relationship.

I find the applicant's insistence that having exclusive use of a kitchen and bathroom in their suite elevates the relationship to that of a tenancy to have no basis in the *Act* and be of no matter.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this living arrangement. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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 21, 2020

Residential Tenancy Branch