



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

The applicant seeks an order of possession under section 54(1) of the *Residential Tenancy Act* ("Act"). And, she seeks recovery of the filing fee under section 72 of the Act.

The applicant filed an application for dispute resolution on October 22, 2020 and a hearing was held November 17, 2020. The applicant, a witness, and the respondent attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Preliminary Issue: Parties to the Dispute

The preliminary issue in this dispute is whether the respondent may be considered a landlord. I find that they cannot.

Section 1 of the Act defines "landlord" as follows:

"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; [. . .]

The applicant testified that, while she has had some interaction with the respondent (the property owner) over the course of her almost-three-year-long tenancy, her initial dealings were with another person at the start of the tenancy. The applicant paid rent for a self-contained basement suite to an individual "Matt" who resides in the upstairs part of the house. She at first paid "Lindsay" rent, and then paid Matt. Matt is a tenant

who rents the entire house from the respondent. Individuals who reside in the house pay Matt the rent. Matt then presumably pays his landlord, the property owner. I note that there is no copy of any written tenancy agreement, and thus the tenancy agreement in this dispute is entirely oral.

While the applicant at one point asked the property owner if she could pay them the rent directly, nothing came of this. In other words, there is, but for a few exchanges between the applicant and the respondent, nothing in evidence to establish that a legal tenant-landlord relationship exists between them. The applicant has been paying rent to the upstairs individual, who, based on the respondent's testimony, is permitted to rent out the basement suite if as he wishes. Thus, any remedy sought by the applicant against *her* landlord – Matt – must be brought against him, and not the respondent. For this reason, as Matt was not named in this application, I dismiss the applicant's application.

While I fully appreciate that this is not the outcome that the applicant likely hoped for, she remains at liberty to apply for an order of possession against her landlord. She may also apply for an order requiring her landlord to return her personal property under section 65 of the Act. It should also be noted that the Act applies to the landlord and tenant legal relationship between the applicant and her landlord, Matt. He is the individual who collected the rent, and he is the individual who has locked the applicant out of her home, and, he is the individual who has dealt with the applicant's property. All of this appears, based on the evidence, to be of his own volition. He is the landlord.

Conclusion

I dismiss the applicant's application, with leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 17, 2020

Residential Tenancy Branch