



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the *Residential Tenancy Act* ("the Act").

The applicant and his "co-tenant" girlfriend appeared; however, there was no appearance on part of the respondent.

Since the respondent did not appear, I explored service of hearing materials upon the respondent. The applicant testified that he personally served the respondent with the hearing materials at the residential property at approximately 11:45 p.m. on February 2, 2021. I accepted the respondent was duly served and I continued to hear from the applicant without the respondent present.

The applicant stated that it appeared the respondent had moved out on February 2, 2021 and the applicant changed the locks to the rental unit on February 5, 2021 although he also stated he offered the respondent a copy of the new key and she did not retrieve it. In considering whether the applicant still required an Order of Possession the applicant made statements that caused me to question whether I have jurisdiction to resolve this matter.

The applicant stated that he and his "co-tenant"/girlfriend are tenants who rented the rental unit from the owner of the property and the respondent moved into the rental unit with them. I heard that the respondent primarily used the lower level of the rental unit but she had access to the kitchen and the bathroom that the applicant and his co-tenant used on the upper floor. The applicant stated the City had inspected the rental unit and was satisfied the residential property was a single family home without a separate suite.

The applicant stated that they considered the respondent to be their housemate but they made this application under the Act because they had signed a residential tenancy agreement so that the respondent may receive disability assistance.

The Act applies to residential tenancy agreements between a landlord and a tenant concerning the tenant's right to possession of a rental unit. My jurisdiction to resolve disputes is conveyed to me under the Act by the Director of the Residential Tenancy Branch. As such, in order for me to further consider the remedies sought in this Application, I must be satisfied that the Act applies to the parties' agreement.

The Act defines a landlord, in relation to a rental unit, to include 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;

[My emphasis in bold]

Paragraph (c) in the definition of "landlord" captures persons who have sublet the rental unit. Accordingly, where a sublet has taken place the original tenant becomes the landlord to the person who took possession of the rental unit.

Residential Tenancy Branch policy guideline 19: *Assignment and Sublet* provides information and policy statements with respect to assigning a tenancy agreement and subletting a rental unit, including examples of situations where a sublet has not taken place for purposes of determining jurisdiction. Below, I have provided excerpts from the policy guideline concerning occupants and roommates, in part:

Occupants/roommates

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.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

Occupants should be aware that the director's authority is limited to the relationship between the original tenant and their landlord.

In this case, the applicant is a tenant and did not vacate the rental unit and give exclusive possession of the rental unit to the respondent. Rather, the permitted another person to move into the rental unit with the applicant and the other tenant who are renting the property from the owner. I did not hear any evidence to suggest the applicant is acting as the owner's agent. As such, I find the agreement/relationship between the applicant and the respondent is that of a roommate or shared living arrangement rather than a landlord/tenant relationship to which the Act applies. Signing a residential tenancy agreement does not in itself make the Act apply.

In light of the above, I find I am not satisfied that the Act applies or that I have jurisdiction to resolve this dispute. Therefore, I decline to consider the Application further.

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: February 18, 2021

Residential Tenancy Branch