



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction
Standards

A matter regarding Lakewood First Project Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, MNDCT, LRE, PSF, LAT

Introduction

This hearing dealt with an Application for Dispute Resolution by the applicant to cancel a notice to end tenancy, to reduce rent for repairs, for monetary compensation for loss or other money owed, to suspend or set conditions on the landlord's right to enter the rental unit, to have the landlord provide services or facilities and to be allowed to change the locks.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary issue

The first issue I must consider is whether the Residential Tenancy Act applies to this matter as the issue of jurisdiction was raised.

Counsel for the respondent in their submission state the following:

The respondent purchased the property in October 2017, with the intent to redevelop the property. At the time of purchase JR was the sole tenant. JR had permission of the landlord to sublet the basement suite to AC. JR terminated their tenancy and vacated the property in June 2020, and their subtenant AC also vacated the property.

The respondent, the owner of the property thought the property was vacant after JR and AC vacated; however, when the owner had contractors attend the property in December 2020, they discover KH living there.

Counsel submits that KH is not a tenant and has no relationship with the owner of the property or with JR, who was the landlord's tenant. Counsel submits they have been told by KH that they were living with AC; however, KH was required to have vacated the premise when JR and AC ended their tenancy and vacated the property.

Counsel submits that KH has refused to vacate and is interfering with the owners plans to redevelop the property.

KH testified that they moved into the premise where AC was renting the basement portion of the property under a sublease agreement with the head tenant JR. KH stated that AC lived in the basement and rented out rooms under a sublet agreement. KH confirmed the head tenant JR and the subtenant AC vacated the property. AC stated because AC accepted a security deposit and they paid rent to AC they are a tenant. The tenant has not paid any rent since June 2020, when AC vacated.

Analysis

The Residential Tenancy Policy Guideline 19. Assignment and sublet states the following.

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.

In this case, the tenant JR with the owner's permission transferred their rights under their tenancy agreement to sublet the basement portion of the premise to AC under their own agreement. JR became the landlord and AC became the subtenant under that agreement.

AC lived in the basement and rented a room to KH and they called that a sublet agreement. However, under the Act this is not considered a sublet. KH is a third party and has no relationship with RJ or the owner. I find KH is not a tenant or even a subtenant under the Act. I find KH is considered a roommate/occupant of AC and has no legal right or obligation under the Act.

Further, both JR and AC terminated their tenancy in June 2020 and vacated the premise. KH was required to leave the property when AC vacated as they have no lawful rights to possess the property as an occupant.

It was not until December 2020, that it was discovered by the owners that KH was on the property. I find KH does not own, rent, or otherwise have lawful permission to be on the property.

Based on the above, I decline jurisdiction of this matter as there is no landlord or tenant relationship. The owner can show the local authorized that KH has no legal rights to be on the subject property under the Act, and this may be considered trespassing as they do not have the owner's permission to be on the land.

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: March 17, 2021

Residential Tenancy Branch