



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order for emergency repairs, and to recover the \$100.00 cost of his Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

The Tenant provided the Parties' email addresses in the Application, and the Parties confirmed these addresses at the outset of the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties.

During the initial stages of the hearing, the Landlord advised that she shares the kitchen with the Tenant, as the Parties share a rental unit that the Landlord rents from her landlords. Policy Guideline #19, "Assignment and Sublet" addresses this situation, as follows:

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 sub-tenant's contractual rights and obligations are as set out in the sublease agreement. Generally speaking, the sub-tenant does not acquire the full rights provided to tenants under the Act. For example, if the landlord ends the tenancy with the original tenant, the tenancy ends for the sub-tenant as well. The sub-tenant would not be able to dispute the landlord ending the tenancy with the original tenant; it would be up to the original tenant to dispute the notice.

Similarly, the original tenant/landlord also does not have all the responsibilities that a landlord has under the Act. For example, while all landlords have a duty to provide and maintain the rental premises, only the original landlord has the right to make repairs. The original tenant does not have the right to make repairs as the landlord to a subtenant. A subtenant may ask the original tenant to make repairs and may apply for a rent reduction if the repairs are not completed within a reasonable time frame. However, the original tenant would be required to request the repairs to be completed by the original landlord and remains responsible to the original landlord for payment of rent as set out in their tenancy agreement.

While the *RTA* does not specify what the rights and responsibilities of the original tenant and subtenant are, the common law, pursuant to s. 91 of the *RTA*, may apply. In the event of uncertainty around the rights and responsibilities of parties to a sublease agreement, an arbitrator will consider the individual circumstances and evidence of each case in making a determination.

I advised the Parties that pursuant to section 4(c) of the Act, I do not have the jurisdiction to decide this matter on their behalf. Section 4(c) states that the Act *does not apply* to "...living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation". This accommodation is outside of the Act, and therefore, I have no jurisdiction to consider this matter. I have referred the Parties to the Civil Resolution Tribunal, and provided them with that telephone number.

The Applicant must bear the cost of his filing fee, as the Act does not apply here.

Conclusion

I decline to rule on this matter, as I have no jurisdiction to consider this Application. The Parties were referred to the Civil Resolution Tribunal for assistance in resolving their 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: November 30, 2021

Residential Tenancy Branch