



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KSRE MARLBOROUGH LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction and Preliminary Matter

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the applicant filed on January 20, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 4, 2022;
- a monetary order for unpaid rent, having issued the 10 Day Notice; and
- the filing fee.

The hearing teleconference was attended by the applicant's representatives but not the respondent. Those present were affirmed and made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The applicant testified they served the Notice of Dispute Resolution Proceeding (NDRP) on the respondent by sending it registered mail to the rental unit on February 28, 2022, and submitted as evidence a receipt and tracking number, as noted on the cover page of this decision. I find the applicant served the NDRP on the respondent in accordance with section 89 of the Act, and deem the NDRP received by the respondent on March 5, 2022, in accordance with section 90 of the Act.

At the beginning of the hearing, the applicant testified that their company purchased the property in September 2021, and that the previous landlord had not created written tenancy agreements and had kept no tenant records. The applicant testified that after the purchase of the property, they went door-to-door with the previous landlord to try to collect tenant information. The applicant testified that the previous landlord told her that the person living in the subject rental unit, AS, had mental health issues, used to live with his mother and sister in the rental unit, but that the mother and sister had moved

out in 2019. The applicant testified that when they knocked on the door of the rental unit, AS did not open the door to speak with them and said he would call his lawyer.

The applicant testified that the previous landlord had tried to recall who lived in the building, and what their names were, and had provided her with a list. For the subject rental unit, the applicant testified that the list recorded AS's mother and sister, and stated that the tenancy began in 2010; AS was not named on the list.

The Act provides the following definitions:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement; and

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

[Policy Guideline 13](#) states that a tenant is a person who has entered a tenancy agreement to rent a rental unit, and if there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit and pay the rent is the tenant.

Policy Guideline 13 states that if a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant.

The applicant has noted that the respondent's mother and sister were listed on a document produced by the former caretakers, and the respondent was not. The applicant has provided no evidence that the previous landlord entered into a tenancy agreement, written or oral, with the respondent.

Therefore, based on the evidence before me, on a balance of probabilities, I find that the respondent, AS, is an occupant, not a tenant.

Section 6(1) of the Act states that the rights, obligations, and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement.

As the applicant has named an occupant in the dispute, not a tenant, I find the dispute is not subject to the Act, and therefore does not fall within the jurisdiction of the Residential Tenancy Branch. Therefore, I decline to make a further decision on the matter.

Conclusion

I decline to rule on this matter, as I have no jurisdiction to consider it.

The application is dismissed without leave to re-apply.

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: June 13, 2022

Residential Tenancy Branch