



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, OLC**

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “*Act*”) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch’s objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Does this matter fall within the jurisdiction of the Act and the Branch?

Background and Evidence

The parties agree on the following facts. The rental unit is a suite in a detached house. The respondents are not the owner of the property nor do they act as agent for the property owners. The respondents reside in the property and rented out a suite to the applicant. The respondent collected rent from the applicant but did so on their own behalf and not as agents for the owners of the property.

Analysis

Landlord is defined in section 1 of the *Act* as:

- (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...

- (c) a person, other than a tenant occupying the rental unit...

Residential Tenancy Policy Guideline 19 provides that a sublet is where the original tenancy agreement remains in place and the tenant and the sub-tenant enter into a new sub-lease agreement. The tenant effectively becomes the "landlord" of a new sub-lease tenancy agreement.

Guideline 19 provides that, "unless the tenant is acting as an 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*."

In the case at hand, based on the undisputed evidence provided, the respondent was not acting as agent of the property owners. The respondent was residing in the rental building at all material times. Accordingly, I find that the applicant is considered an occupant/roommate and the *Act* does not apply to the relationship.

Under these circumstances and based on the evidence before me, I find that the *Act* would not apply to this living arrangement. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: August 5, 2022

Residential Tenancy Branch