



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, RPP, MNSD

Introduction

This hearing was scheduled to hear a Tenant's Application for Dispute Resolution against the respondents for return of personal property and monetary compensation.

The tenant and his witness/assistant appeared at the hearing and they were affirmed. The landlords/respondents did not appear. Accordingly, I explored service of hearing materials upon the respondents.

The tenant and witness submitted that they sent the proceeding package and evidence to the respondents via registered mail on July 30, 2022 and two registered mail receipts were provided as proof. I was satisfied the original proceeding package was served.

In August 2022 the tenant submitted an Amendment but when asked if that was served to the respondents, the tenant stated he was uncertain. I was unsatisfied the Amendment was served and I declined to permit the Amendment. I informed the tenant that I was willing to proceed to consider the original Application for Dispute Resolution to which the tenant indicated he would be satisfied with that.

Preliminary matter – Jurisdiction

The tenant testified that he had a tenancy agreement with the respondents. The tenant testified that he was renting a room in an apartment from the respondents and the respondents were also living with the apartment. The tenant testified that the respondents are not the owners of the apartment but are tenants who pay rent for the entire apartment to the owner/property manager of the apartment.

My jurisdiction to resolve disputes provided under the Residential Tenancy Act ("the Act" or "RTA"). The Act applies to disputes between a landlord and a tenant who have

a tenancy agreement for a rental unit and residential property. The Act defines what a landlord is and if the respondents do not meet the definition of a “landlord” under the Act then the Act does not apply to the dispute between the parties.

The definition of a “landlord” under section 1 of the Act is as follows:

"landlord", in relation to a rental unit, includes 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 underlined]

Given the definition of “landlord” under the Act, in order for the respondents to be considered a landlord they would have to be the owner of the rental unit, acting on behalf of the owner of the rental unit, or a tenant who is not occupying the rental unit themselves and exercises rights of a landlord (ie: sublessor).

Residential Tenancy Policy Guideline 27: *Jurisdiction* provides the following information concerning roommates in section 4.:

4. DISPUTES BETWEEN TENANTS AND ROOMMATES

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

For example, if Tenant A enters into a tenancy agreement to rent a 2 bedroom rental unit from their landlord and then rents the second bedroom out to Tenant B, the RTA would not apply to a dispute between those tenants even if Tenant B has exclusive possession of the second bedroom. Under the tenancy agreement between Tenant A and the landlord, Tenant A is entitled to possession of the 2 bedroom rental unit. Since Tenant A is still occupying that rental unit, Tenant A is excluded by definition from being a landlord under the RTA. The director will decline jurisdiction to resolve these types of disputes.

However, if Tenant A is renting residential property (like a house) from their landlord that has more than one rental unit (like an upper suite and a lower suite) and Tenant A rents out the lower suite to Tenant B, the RTA may apply because Tenant A may meet the definition of a landlord. The director may take jurisdiction in these matters.

For information on the requirements around subletting, please see Policy Guideline 19: Sublet and Assignment. Depending on the particulars, the Civil Resolution Tribunal may have jurisdiction to resolve disputes between tenants and roommates. Visit civilresolutionbc.ca for more information.

[My emphasis underlined]

Based on what is before me, I am unsatisfied the respondents meet the definition of landlord under the Act. Accordingly, I decline to accept that I have jurisdiction to resolve the dispute between the parties and I do not consider the application any further.

The applicant remains at liberty to pursue remedy in the appropriate forum.

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: September 23, 2022

Residential Tenancy Branch