



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by S.C. July 05, 2022 (the “Application”). S.C. applied as follows:

- For an Order of Possession based on 10 Day Notices to End Tenancy for Unpaid Rent or Utilities
- To recover unpaid rent
- To recover the filing fee

P.W. appeared at the hearing for S.C. J.Z. appeared at the hearing with P.W. Nobody appeared at the hearing for M.D. and J.H. (the “Respondents”).

I explained the hearing process to P.W. and J.Z. (the “Applicants”). I told the Applicants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Applicants provided affirmed testimony.

P.W. submitted evidence prior to the hearing. The Respondents did not submit evidence. I addressed service of the hearing package and P.W.’s evidence. J.Z. testified that they served the hearing package and P.W.’s evidence to the Respondents in person August 29, 2022.

Based on the undisputed testimony of J.Z., I am satisfied the Respondents were served with the hearing package and P.W.’s evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”) on August 29, 2022. I find J.Z. did not comply with rule 3.1 of the Rules in relation to the timing of service; however, I find

the Respondents received the package more than four months prior to the hearing and therefore in ample time to prepare for, and appear at, the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Respondents. The Applicants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Preliminary Issue – Jurisdiction

There is a written tenancy agreement submitted which is between S.C. and J.Z. as well as a co-tenant not named on the Application. The agreement relates to the rental unit address and started June 01, 2019. Rent in the agreement is \$5,300.00 per month due on the first day of each month.

During the hearing, I asked the Applicants about the tenancy agreement in this matter and received the following information.

The rental unit is a house with an upper and lower suite. Each suite has its own kitchen and bathroom. S.C. rented the entire house to J.Z. in 2019. In 2021, J.Z. asked to rent the basement suite out and S.C. agreed but J.Z. remained responsible for paying rent for the entire house. J.Z. rented the basement suite to the Respondents. The Respondents have stopped paying rent. S.C. collects rent from J.Z. for the entire house. J.Z. has paid rent for the entire house to S.C. directly throughout the tenancy. The Respondents are supposed to pay rent to J.Z. The Respondents paid a security deposit to J.Z. Last year, the Respondents refused to pay rent to J.Z. and wanted to speak to P.W. which is how P.W. got involved in this matter; however, the Respondents remained “tenants” of J.Z. The relationship between S.C., P.W., J.Z. and the Respondents has not changed. The Respondents know J.Z. is the main tenant, that they pay J.Z. and J.Z. pays S.C. for rent.

I amended the Application to include J.Z. as an Applicant given the situation.

Analysis – Jurisdiction

The definition of “landlord” set out in 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) ...
- (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...

(emphasis added)

RTB Policy Guideline 27 at page six states:

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.

(emphasis added)

S.C. cannot seek an Order of Possession or Monetary Order against the Respondents because there is no tenancy agreement between S.C. and the Respondents and therefore no contractual relationship between S.C. and the Respondents. The tenancy agreement is between S.C. and J.Z. and therefore the contractual relationship is between S.C. and J.Z.

I find the Respondents are roommates of J.Z. because J.Z. rents the entire house from S.C. and is still living in the house. I acknowledge RTB Policy Guideline 27 outlined above states that the relationship between J.Z. and the Respondents “may” be that of landlord and tenant; however, I find the Policy Guideline allows for discretion on this point and my view is that J.Z. and the Respondents are roommates because J.Z. is entitled to possession of the entire house under their tenancy agreement with S.C. and is still living in the house. I find the *Act* does not apply to the relationship between J.Z. and the Respondents. This means the Respondents do not have any rights under the *Act* and J.Z. does not need to obtain an Order of Possession pursuant to the *Act*. This also means J.Z. cannot obtain either an Order of Possession or Monetary Order against

the Respondents through the RTB because the RTB does not have jurisdiction to decide issues involving J.Z. and the Respondents.

Given the above, the Application is dismissed without leave to re-apply because the Respondents are roommates and occupants of the rental unit, the *Act* does not apply to the Respondents and the RTB cannot decide issues between either S.C. and the Respondents or J.Z. and the Respondents.

Conclusion

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 *Act*.

Dated: January 23, 2023

Residential Tenancy Branch