



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, MNDCT, DRI, PSF, LRE, OLC, FFT

Introduction and Preliminary Matters

On February 11, 2023, the Applicant made an Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to dispute a rent increase pursuant to Sections 41 and 43 of the *Act*, seeking the provision of services and facilities pursuant to Section 62 of the *Act*, seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Applicant and the Respondent attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing package, the Amendment, and the Applicant's evidence was discussed, and there were some issues concerning service. However, those will not be addressed here as concerns with jurisdiction were raised as the hearing progressed.

The Applicant advised that she started renting a room on July 1, 2019, that her rent was \$460.00 per month, that it increased to \$580.00 per month on January 1, 2022, and that it most recently increased to \$650.00 per month. She confirmed that rent was due on the first day of each month, she acknowledged that a security deposit was never paid, and she stated that a written tenancy agreement was never created. She testified that

the tenancy ended on March 2, 2023, when the Respondent changed the locks and forcibly evicted her.

She did not make any specific submissions with respect to her belief that this tenancy was covered under the jurisdiction of the *Act* other than to say that she had lived there for three and a half years. She confirmed that she never received a notice to end her tenancy that was in the approved form, and she never filed any dispute through the Residential Tenancy Branch for any issues that she was dissatisfied with during the tenancy until this Application.

The Respondent advised that she rents the whole property, and she did not have any written permission from her landlord to bring any persons into the property as another tenant. However, she testified that she brought the Applicant into the property on July 1, 2019, as an occupant for a limited time, but COVID occurred and they were stuck together. She confirmed that she never had the intention to rent to this person as a tenant under the *Act*, she stated that there was no written tenancy agreement confirming that a tenancy was established, she acknowledged that no security deposit or pet damage deposit were ever collected, and she testified that she did not ever give any notice to end the tenancy in the approved form.

Regarding this circumstance, I find it important to note that Policy Guideline #19 states the following:

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 undisputed evidence before me is that the Respondent rented out the entire property, that she also lives in the property, and that she rented out different rooms within the property to various people. Moreover, there is no evidence before me that the Respondent was acting on behalf of the landlord, who owns the property. As such, it appears as if the Applicant is merely an occupant/roommate of the Respondent.

There are also other factors which reasonably support a finding that the *Act* does not have any jurisdiction over this situation. I note that there was never a tenancy agreement signed by the parties which indicated that the *Act* applied, nor was a security deposit or pet damage deposit ever paid. Furthermore, the Respondent never served the Applicant a notice to end the tenancy in the approved form. This would be a

required document for a landlord to serve to a tenant if the landlord deemed that the tenancy needed to end. Given that the Respondent never used an approved form to end the tenancy, I find that this further supports the Respondent's position that this was never a tenancy under the jurisdiction of the *Act*.

Finally, I find it important to note that the Applicant mentioned that there were several breaches of the *Act* that she claimed happened during the tenancy. One of them was an alleged rent increase in January 2022. However, in my view, if the Applicant was of the belief that she was a tenant covered under the jurisdiction of the *Act*, it is not clear why she never took any action and attempted to dispute this through the Residential Tenancy Branch over a year ago when it occurred. I am satisfied that this would also be a further indication that neither party was of the belief that this was a tenancy covered under the jurisdiction of the *Act*, when this tenancy commenced.

When reviewing the totality of the evidence before me, and after hearing testimony from both parties, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy as there is no landlord/tenant relationship that has been created. Therefore, I have no jurisdiction to render a Decision in this matter.

As the Applicant was not successful in this Application, I find that the Applicant is not entitled to recover the \$100.00 filing fee paid for this Application.

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: March 17, 2023

Residential Tenancy Branch