



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the applicant's application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the respondent, pursuant to section 72.

The applicant participated in the teleconference. The respondent had a family member and legal counsel represent her estate.

Issue(s) to be Decided

Is the applicant entitled to a monetary order as claimed?

Is the applicant entitled to the recovery of the filing fee?

Preliminary Issue – Jurisdiction

The applicant gave the following testimony. The applicant testified that her tenancy began on August 1, 2021 and ended on December 13, 2021. The applicant testified that the agreement was to be for one year. The applicant testified that the respondent gave her written notice on December 12, 2021 to move out on December 13, 2021 for two weeks so that the respondent could deal with her health issues. The applicant testified that the subject unit was the entire home which is a one bedroom suite with one bathroom and that she didn't share with the respondent. The applicant testified that the respondent didn't let her return and barricaded the yard and suite. The applicant testified that she is seeking \$35,000.00 for various costs incurred such as hotels, meals, storage and mental and physical trauma and anguish.

Counsel for the respondent gave the following submissions. The respondent; WB, passed away in September 2022. Counsel submits that WB didn't own the property and wasn't the landlord. Counsel submits that WB rented the home for many years and that the applicant was her roommate. Counsel submits that the home has three bedrooms and two bathrooms. Counsel submits that the applicant has not provided any evidence to show that this arrangement was anything but a dispute among roommates. Counsel submits that the applicant has not shown any evidence that the respondent denied her the ability to return but, rather that the applicant didn't want to be around to see WB's battle with cancer that ultimately took her life. Counsel submits that as this is not a landlord tenant relationship but a roommate relationship, and that the Branch does not have jurisdiction to hear this matter.

Analysis

Residential Tenancy Policy Guideline 27 addresses the issue before me as follows.:

The RTA gives the director authority to resolve disputes between landlords and tenants.

However, a tenant who is occupying a rental unit is excluded from the definition of 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 Person A enters into a tenancy agreement to rent a 2 bedroom rental unit from a landlord and occupies the first bedroom and rents the second bedroom out to Person B, the RTA would not apply to a dispute between Person A and Person B even if Person B has exclusive possession of the second bedroom. The director does not have jurisdiction to resolve these types of disputes.

However, if Person A is renting a residential property with more than one rental unit (like a house with an upper suite and a lower suite) and Person A rents out the lower suite to Person B, the director may have jurisdiction. Person A may meet the definition of a landlord under the RTA because they are not occupying the rental unit Person B resides in, but they are entitled to possession of that rental unit and are exercising the rights of a landlord in relation to it.

Counsel for the respondent submitted documentation including affidavits from several parties that state that the applicant and respondent shared the home as roommates.

The applicant didn't provide sufficient evidence to show that this was a landlord tenant relationship.

In this case, I find that the applicant has the onus to provide evidence to support their application. Further, The Policy Guideline states that it is up to the party making an application under the Act to show that a tenancy exists. The tenant submits that the matter was determined in a previous hearing before me, however those were only preliminary discussions where no ruling was made.

When weighing all the evidence and testimony on this matter, I find on a balance of probabilities, this living situation is a shared accommodation and that the applicant and respondent were roommates. The applicant has provided insufficient evidence to establish that she is a tenant living under a tenancy agreement.

Based on the documentation submitted from the respondent, I find that WB and TS were roommates/occupants and have no rights or responsibilities under the *Residential Tenancy Act*.

Conclusion

I decline jurisdiction to hear this matter.

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: May 29, 2023

Residential Tenancy Branch