



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

This dispute relates to the Tenant's April 24, 2023 Application for Dispute Resolution seeking remedy under the *Residential Tenancy Act* (Act) for the following:

- to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice),
- for the Landlord to comply with the Act.

Preliminary Matter – Jurisdiction

The respondent states the owner of the rental unit shares with the applicant the common areas of the rental unit, including the kitchen and bathroom, therefore the living arrangement is excluded from the Residential Tenancy Act under section 4 (c).

The applicant said the respondent does not share the bathroom and kitchen with them, stating the respondent lives in a separate upstairs suite with their own bathroom and kitchen.

Issue(s) to be Decided

- Is the accommodation agreement a tenancy under the Act?
- Does the Notice end the tenancy?

Facts and Analysis

- Is the accommodation agreement a tenancy under the Act?

The respondent's written submission states the Act does not apply for the following reasons:

- the applicant only rented the private bedroom as part of a shared accommodation,
- the owner is still owning and using the kitchen, living room and bathroom,
- the common areas were never rented to the applicant, however, the applicant is able to access and share the common areas during her stay.

The applicant states the common areas of the downstairs suite are only used by co-tenants on that floor. Although the respondent claims the owner is using the kitchen, living room and bathroom, their written submission describes the owners living upstairs in a separate unit. The written submission also describes the property manager, not the owners, attending downstairs to check common areas.

To provide guidance on living arrangements that are outside of the RTB's jurisdiction, Policy Guideline 27 provides the following examples:

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.

Although the people in these examples are all tenants, the second scenario matches the living arrangement described by the applicant and respondent because the respondent is not occupying the same rental unit and common areas as the applicant. The respondent has given the applicant exclusive possession of a bedroom and use of the common areas in a rental unit, but the respondent does not use the same common areas because they occupy a separate unit upstairs with their own kitchen and bathroom. The owner's provision of common areas that are shared by co-tenants in the rental unit does not equate to the owners sharing the common areas with the co-tenants.

I find that because the respondent occupies a separate unit upstairs, the respondent is a landlord and the applicant is their tenant and the accommodation agreement is a tenancy under the Act.

- Does the Notice end the tenancy?

On April 22, 2023, the Landlord issued the Notice with a move out date of May 2, 2023.

The Notice the Landlord has provided does not conform to any approved RTB form for ending a tenancy. I find the tenancy shall continue until ended lawfully.

Conclusion

The tenancy continues until it is lawfully ended. Section 44 of the Act identifies the ways a tenancy may end.

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: June 13, 2023

Residential Tenancy Branch