



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR OPB MND MNR MNSD MND FF  
CNR RP LRE AS RR

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by each of the named participants.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

### Issue(s) to be Decided

1. Do these matters fall within the jurisdiction of the *Residential Tenancy Act*?

### Background and Evidence

The following facts were not in dispute:

- The rental unit is a bedroom located in a three bedroom home
- The Tenant, N.B., rents the entire house from the owner of the home
- The Tenant, N.B., rents out the bedrooms to roommates who share the common living spaces such as the bathroom, kitchen and living room
- The applicant/respondent to these disputes, C.M. rents a room from N.B. and paid her a security deposit of \$200.00

N.B. testified that she became a Tenant of the house in 1997 when she and her husband entered into a rental agreement with the owner. Then in 2006 her husband passed away so she began taking in roommates to assist her in paying the rent. She stated her Landlord is aware that she takes in roommates and he even met C.M. a few months ago.

N. B. confirmed that she takes care of the house by keeping it clean and she informs the Landlord when repairs are required. She stated she is not responsible for arranging repairs to be completed to the property, other than informing the Landlord of any presenting issues, and there are no other agent duties she is responsible for.

### Analysis

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas. In order to find a tenancy is in place I must be satisfied that the parties meet the definition of landlord and tenant.

Section 1 of the Act defines a landlord, in relation to a rental unit, to include 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** [emphasis added]
  - (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;

After reviewing N.B. evidence I find N.B. to be a tenant and the owner of the property is her landlord as defined by the Act.

An Agent as defined by Black's Law Dictionary is "one who is authorized to act for or in place of another; a representative".

The evidence supports N.B. has no authority or obligation to maintain and repair the rental property as an agent for the landlord as prescribed under the Act, nor is there any indication that N.B. has the authority to act as agent for the owner. Accordingly I find

there to be insufficient evidence to support N.B. has the authority to act as the owner's agent in the capacity as a landlord.

A sublet or sublease is a lease given by the tenant or lessee of a residential premises for a specific period of time to a third person for a period of time that is less than the Tenant's original lease period, and where the Tenant no longer occupies the rental property. Therefore I do not accept the Advocate's position that NL has sublet the unit.

An occupant is defined in the *Residential Tenancy Policy Guideline Manual*, section 13 as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree in writing to enter into a tenancy agreement to include the new occupant as a tenant.

Based upon the aforementioned, I find N.B. does not meet the definition of a landlord and I find C.M. to be an occupant. Thus, there is not a tenancy agreement in place between N.B. and C.M. to which the *Residential Tenancy Act* applies.

In light of the above, it is my determination that N.B. and C.M. do not have rights or obligations to each other under the *Residential Tenancy Act* and therefore I do not have jurisdiction to resolve a dispute between the parties.

### Conclusion

I DECLINE TO HEAR the matters pertaining to both applications, for want of jurisdiction.

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: November 08, 2012.

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Residential Tenancy Branch