



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Imperial Tower Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC; FF

Introduction

The Applicant seeks compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Respondent.

The parties gave affirmed testimony at the Hearing.

Preliminary Matter: Does the Residential Tenancy Act have jurisdiction?

At the outset of the Hearing, the Respondent SC stated that the Applicant VF is not the Respondents' tenant. SC testified that VF was an unauthorized occupant.

VF stated that he moved into the rental unit in September, 2014, and that the resident manager of the rental unit was aware that he was living there. He testified that he paid his rent directly to AM, who is the brother of WM who has a tenancy agreement with SC. VF acknowledged that there was no written tenancy agreement between him and the Respondents or between him and WM. VF submitted that he was given access to the rental unit by the resident manager and had "numerous conversations" with the resident manager and that he had been "accepted as a tenant".

SC stated that there are more than 500 people living in the rental property, which is an apartment building of 263 units. He testified that there has been management turn-over since VF moved in. SC testified that he provided WM with a "breach letter" on August 5, 2015, advising WM that he was in breach of a material terms of the tenancy agreement by "allowing an additional person to occupy the rental unit without permission". The letter provides notice to "immediately correct the breach by having the occupant complete the enclosed Application for Tenancy".

Analysis

The dispute resolution process considers applications between tenants and landlords as they relate to tenancy agreements and rights, obligations and prohibitions under the *Residential Tenancy Act* (the “Act”).

Section 1 of the Act defines “tenancy agreement” as follows:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 1 of the Act defines “landlord” 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) 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
 - (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;

There is no dispute that WM has a tenancy agreement with the Respondents. However, based on the testimony of the parties, I find that WM did not permit the VF to occupy the residence on behalf of the Respondents. I find that the Respondents are not VF’s “landlords” as defined by the Act. I find that VF was an occupant only. Occupants have no rights or obligations under the Residential Tenancy Act; however, VF **may** have a claim under another jurisdiction.

Conclusion

I decline jurisdiction in this matter as I find that no tenancy agreement existed between the parties as defined by the Act.

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: February 11, 2016

Residential Tenancy Branch

