



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H3O ENTERTAINMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, LRE, FF

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the respondent to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order to suspend or set conditions on the respondent's right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The applicant and the individual respondent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The respondent confirmed that he was the owner of the respondent company named in this application and that he had permission to speak on its behalf at this hearing (collectively "respondents"). Four witnesses called into the hearing on behalf of the tenant but they were excluded from the outset of the hearing and their testimony was not required by the end of the conference. This hearing lasted approximately 69 minutes in order to allow both parties to fully present their submissions.

The respondent confirmed receipt of the applicant's application for dispute resolution hearing package and the applicant confirmed receipt of three pages of the respondent's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the respondent was duly served with the applicant's application and the applicant was duly served with the respondent's three-page written evidence package.

The respondent confirmed that he did not serve additional written evidence for the hearing to the applicant aside from the three-page document referenced above. He said that he provided additional evidence to the applicant on October 15, 2017, prior to the hearing, but not in response to her application. The applicant confirmed that she did not receive any written evidence from the respondent for this hearing. She said that when the respondent tried to serve her on October 15, 2017, she did not open the package of documents, so she did not know what was inside. I informed both parties that I could not consider the respondent's additional written evidence at this hearing or in my decision because it was not served upon the applicant for this hearing, as required by Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

At the outset of the hearing, I asked both parties to provide verbal submissions on whether I had jurisdiction to hear the applicant's application under the *Act*, as the respondent raised the issue in his written evidence.

Issue to be Decided

Does the RTB have jurisdiction to consider this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the applicant's claims and my findings are set out below.

The respondent testified regarding the following facts. The rental unit is a two-storey condominium of approximately 2,300 square feet total. The rental unit occupies two floors in an eight-storey building. The respondent was the previous owner of the rental unit for approximately 15 years and as of December 31, 2015, sold the property to a new owner. As part of the purchase and sale agreement, the respondent leased back the property from the owner and has a tenancy agreement with the owner whereby he pays \$2,000.00 per month for possession and use of the entire rental unit.

The respondent testified regarding the following facts. The applicant began residing at the property on July 9, 2017, and pays the respondent \$2,000.00 per month for rent, of which she failed to pay from September to November 2017, inclusive. She also pays for 50% of utilities. She occupies the upper floor of the unit, while the respondent occupies the lower floor. The parties share the kitchen and bathroom on the lower floor. The applicant paid a reduced security deposit of \$300.00 to the respondent because

she refused to pay the correct amount. The respondent claimed that he reduced the rent payable by the applicant (which he said should be approximately \$8,000.00 per month) because she was his friend and it was a co-share roommate agreement where he could give 30-days' notice at any time to the applicant to leave if he needed the place for any reason. He stated that he had 24-hour access to the property until the applicant changed the locks and denied him any access around mid-October 2017 to present. No written tenancy agreement was signed between the parties and the respondent drafted a written addendum after the applicant requested a document for her son's school, which the applicant then refused to sign.

The applicant testified regarding the following facts. She moved into the rental unit at a lower rate of \$2,000.00 per month plus 50% of utilities because the respondent told her that the building could be torn down and she could receive a 30-day notice to leave at any time because of that. She agreed that she did not have a written tenancy agreement with the respondent and when she asked for one for her son's school, the respondent asked her to sign an addendum, which she said would take away her residential tenancy rights so she refused. She stated that the respondent advertised the unit for \$5,000.00 per month, not \$8,000.00 as he claimed it was worth. She said that she has exclusive use of the entire rental unit, except for the office, boardroom and bathroom in the boardroom located on the lower floor. She maintained that the respondent only has access to the lower floor but he has entered her private space on the upper floor without notice or permission, which the respondent denied. She claimed that there is no need to share the kitchen or bathroom with the respondent because he has his own bathroom in the boardroom of the lower floor. She explained that the respondent only keeps his furniture and miscellaneous items at the rental unit because he does not live or sleep there, he only visits once per week for about 15 minutes each time. She said that she spoke with the police and they advised her to protect herself from the respondent's unauthorized access to her floor, so she invented a "fork" to install over the deadbolt in the rental unit and restricted the respondent's access to enter. She claimed that the respondent has to provide her with 24 hours' notice to enter between the business hours of 7:30 a.m. and 3:30 p.m. because he is only there to conduct business.

The respondent submits that this is not a residential tenancy and I have no jurisdiction to hear this claim because it is excluded by the *Act*. He claimed that this is a co-tenant, roommate-sharing agreement, which he is entitled to end at any time without cause with 30-days' notice. He claimed that he is entitled to 24-hour access to the lower level of the unit and a shared kitchen and bathroom with the applicant on the lower level. He stated that there is no written tenancy agreement, the applicant pays a reduced rent as

a roommate, he occupied the unit daily until the applicant locked him out, and he maintains his possessions at the rental unit and always has.

The applicant submits that this is a residential tenancy and I have jurisdiction to hear this application under the *Act*. She said that it was always the verbal agreement between the parties that this was a tenancy with a specific amount payable for rent and utilities each month. She claimed that she has exclusive possession over the entire rental unit except for the office, boardroom and bathroom on the lower floor which is used by the respondent for business only and he is hardly at the unit.

Analysis

Since both parties agreed that the respondent is no longer the owner of the rental unit, it is unnecessary for me to determine jurisdiction under section 4(c) of the *Act*, which excludes tenancies where an owner and tenant share kitchen and bathroom facilities.

However, I must decide jurisdiction with respect to the unit where the applicant currently resides, as both parties dispute whether they have a landlord and tenant relationship.

The jurisdiction of the *Act*, and in turn my jurisdiction, is set out in section 2 of the *Act*.

Subsection 2(1) of the *Act* sets out that:

2 (1) Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

“Tenancy agreement” is defined in section 1 of the *Act* (my emphasis added):

*"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...*

“Landlord” is defined in section 1 of the *Act* (my emphasis added):

"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;*

Section 6 indicates that the *Act* is enforceable between a landlord and tenant (my emphasis added):

- 6 (1) The **rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant** *under a tenancy agreement.*
- (2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*
- (3) *A term of a tenancy agreement is not enforceable if*
 - (a) the term is inconsistent with this Act or the regulations,*
 - (b) the term is unconscionable, or*
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Without this intention, no enforceable agreement under the *Act* arises from the relationship.

I find that the respondent is not a “landlord” as defined in section 1 of the *Act*. The definition of landlord specifically excludes “a tenant occupying the rental unit.” I find that the respondent is a tenant occupying the rental unit. He has a tenancy agreement with the owner of the property, which the applicant did not dispute. He rents the entire rental unit, not a portion, from the owner as per their purchase and sale agreement and tenancy agreement. The applicant did not dispute this fact. The respondent did not vacate the rental unit or remove any of his belongings, at any point. The applicant did not dispute this fact. Occupation of a rental unit does not require the respondent to sleep there, which both parties agreed that the respondent did not. The applicant

agreed that the respondent comes to the rental unit at least once per week and has his own furniture there as well as possession and use of the office and boardroom, which also has a bathroom, in the lower level of the rental unit. I find that the respondent occupies the rental unit.

Since the respondent is not a landlord as defined under the *Act*, I find that no landlord and tenant relationship was created between the applicant and respondent and therefore, no enforceable rights, obligations, or prohibitions can be determined by me under the *Act*. Since a tenancy agreement can only be created between a landlord and a tenant, I find that none has been created here and hence, the *Act* does not apply.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the applicant's application.

Conclusion

I decline jurisdiction over the applicant's application.

I make no determination on the merits of the applicant's application.

Nothing in my decision prevents either party from advancing their claims before a Court of competent 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 30, 2017

Residential Tenancy Branch