



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, RP, FF

Introduction

This hearing was convened in response to an application pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing an assignment or sublet - Section 65;
2. An Order for repairs - Section 32; and
3. An Order to recover the filing fee for this application - Section 72.

Each of the Parties that appeared was given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties confirm that although three persons are named as the applicants, only one of the named persons, Tenant AA (the “Tenant”), has made the application and is seeking the claims in the application. The Tenant states that the repairs being sought were completed and withdraws the claim for repairs. The Tenant states that he is not intending to move out of the unit either temporarily or permanently. The Tenant states that he is only seeking peace and a determination that his living accommodation is governed by the Act should he have a future dispute.

Section 62(4)(b) of the Act provides that all or part of an application for dispute resolution may be dismissed if the application or part does not disclose a dispute that may be determined under this Part. Based on the Tenants’ evidence that there is no intention to move out of the unit either temporarily or permanently I find that the Tenant is not seeking an order to allow a sublet or

assignment and I dismiss that part of the application. I also accept the Tenant's withdrawal of the claim for repairs.

Issue(s) to be Decided

Is the Tenant's accommodation under the jurisdiction of the Act?

Background and Evidence

The Tenant states that:

- he occupies a room in a separately secured basement unit in a house;
- the room was found through an advertisement placed by Tenant BB;
- Tenant BB told the Tenant that rent of \$600.00 is payable on the first day of each month;
- his occupation of the room started on August 1, 2018;
- no security deposit was collected by Tenant BB;
- Tenant BB rents the basement unit from Amy P who lives in the upper unit of the house;
- Amy P has told the Tenant that she is both the owner and a tenant;
- he believes that Amy P is not the owner of the house and is a tenant of the owner;
- for the first two months he was told by Tenant BB to pay his rent directly to Amy P; and
- after this application was made he paid his rent to Tenant BB.

The Tenant states that he simply wants to know who to hold accountable for his tenancy when problems arise. The Tenant states that before this application was made nobody seemed to want to be responsible for the tenancy. The Tenant states that Tenant BB would variously tell the Tenant that the either Tenant BB was responsible or that Amy P was responsible. The Tenant states that when making his application he did not know who to name as the Landlord. The Tenant argues that Amy P is his Landlord because that is who he paid rent to.

Tenant BB states that:

- he is the tenant of the basement unit for a monthly rent of \$1,200.00;
- he rents the unit from Amy P;
- he initially believed that Amy P owned the house containing his unit;
- he believes he is the landlord of the Tenant although he never told the Tenant this and his intention was only to have the Tenant as a roommate;

- Amy P gave him permission to have a roommate and is aware of the Tenant having rented the room in the basement suite; and
- he told the Tenant to pay his portion of the rent directly to Amy P out of convenience.

Amy P states that:

- she rents the upper portion of the house from her mother AP;
- she acts as her mother's agent in renting out the separate basement suite;
- there is only a tenancy agreement with Tenant BB and this is who is responsible for the entire rent;
- Tenant Bb has rented the unit for the past 17 months;
- the unit was rented to Tenant BB for two occupants;
- was aware that Tenant BB was going to obtain another roommate and that there was no involvement by herself with Tenant BB's selection of another roommate;
- she is not the Landlord in any agreement with the Tenant.

AP states that:

- she is the owner of the entire house;
- that Amy P acts as her agent in renting out the lower unit;
- Tenant BB rented the lower suite as the only tenant from her agent Amy P;
- she had nothing to do with the Tenant being a resident or occupant of the lower unit;
- she does not want to rent the basement unit under separate tenancy agreement to each of the two occupants;
- she only wants rent to be paid by one person for the lower suite;
- Tenant BB had a roommate at the start of the tenancy agreement with Amy P and that this person subsequently moved out; and
- she does not want to be involved in disputes between the Tenant and Tenant BB.

Analysis

Section 2(1) of the Act provides that the Act applies to tenancy agreements, rental units and other residential property. Section 1 of the Act defines "**tenancy agreement**" as, inter alia, an agreement, whether written or oral, express or implied, between a landlord and a tenant.

Section 1 of the Act defines "landlord" as including a person, other than a tenant occupying the

rental unit, who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit. Based on the undisputed evidence that the room was advertised and the rent negotiated by Tenant BB, and considering the undisputed evidence that the Amy P and AP did not enter into any agreement, oral or written with the Tenant to move into the unit, I find that Amy P and AP did not enter into any tenancy agreement with the Tenant. As a result I find that Amy P and AP are not the Tenant's Landlords. As Tenant BB is a tenant, I find that Tenant BB cannot be a landlord capable of entering into a tenancy agreement with the Tenant that would be covered by the Act. I consider that the Tenant is in a roommate situation and that the Act therefore does not apply to any agreement between the Tenant and Tenant BB in relation to the Tenant's accommodation in the rental unit. I therefore dismiss the application.

Conclusion

The Act does not apply to the Tenant's accommodation.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 07, 2018

Residential Tenancy Branch