



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, MNDCT, LRE, OLC, FFT**

Introduction

This hearing was convened following a review consideration decision issued on December 19, 2022. The reviewing arbitrator ordered that the original decision dated December 9, 2022 be suspended pending a new hearing of the original application.

This hearing dealt with an application filed pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order suspending the landlord’s right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the applicant and the respondent attended the hearing. The respondent acknowledged service of the review consideration decision, the applicant’s original application for dispute resolution and the amendment. The respondent had no issues with timely service of documents.

Preliminary Issue

At the commencement of the hearing, the parties confirmed that the applicant had vacated the premises on July 27, 2022. Consequently, I advised the parties that the following portions of the application for dispute resolution were dismissed without leave to reapply:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55;

- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and

Issue(s) to be Decided

Does the director of the Residential Tenancy Branch have jurisdiction to decide the remaining matters on the application?

Background and Evidence

The applicant seeks compensation from the respondent for ending the tenancy pursuant to a notice to end tenancy drafted on an unofficial form. The effective (move-out) date on the unofficial form was August 1, 2022 however the applicant notified the other party that she "evacuated" from the property as of July 27, 2022.

The respondent and her husband, called as a witness, both testified that the applicant was not their tenant, but a roommate taken in as a homestay. The respondents testified that they are themselves tenants and had been living in the rental property as tenants for about a year before the applicant came to stay with them.

The respondents testified that they sought a student to live with them in their rental house and the student agency they contracted with sent the applicant in this hearing instead. Even though she wasn't a student, they welcomed her and shared their living accommodations with her, including the kitchen and bathrooms. The reason the respondents served the applicant with an unofficial notice to end tenancy was because they knew they were not landlords. They had no other way to "kick out" the respondent when the living situation became uncomfortable. They acknowledge serving the applicant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities because the applicant did not pay her portion of the shared rent to them.

The applicant points to the document [Proof of Family Use is Fake.pdf](#) to show that the respondents misrepresented the homestay to her. The applicant testified that she had her own "kitchen", a microwave and sink. I note that in this document, the respondents are called "hosts" and a short description of the "host's" family – husband, wife, daughter and 2 sons, is provided.

Analysis

The respondent argues that she was not the applicant's landlord but was a host to a homestay student. I find the evidence before me leads me to conclude the same.

Residential Tenancy Branch Policy Guideline 19 [Assignment and sublet] provides information to help guide parties to an application understand issues likely to be relevant. On page 5 of the document, it states:

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the *Residential Tenancy Act*... If there is no landlord/tenant relationship, the Act does not apply.

Based on the testimony of the parties and the evidence supplied, I find that the applicant was an occupant/roommate of the respondent and her family. I make this finding based on the fact that the applicant found the room she rented in the respondent's rented house via a homestay website and that the respondent advertised it such. It is clear from the document [Proof_of_Family_Use_is_Fake.pdf](#) that the nature of the space is a room located in the respondent family's rented house which makes this an occupant/roommate living arrangement.

The Act defines a landlord as:

"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;

(bold emphasis added)

As the respondent is a tenant, living under her own tenancy agreement with the owner of the rental unit, she cannot be a landlord. Accordingly, I find there is no landlord/tenant relationship between the applicant and the respondent and the Residential Tenancy Act does not apply.

Conclusion

I decline the jurisdiction to adjudicate this application as I find the Residential Tenancy Act does not apply to this living arrangement.

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: April 25, 2023

Residential Tenancy Branch