

Residential Tenancies Tribunal

Application 2023-No.0905 -NL

Decision 23-0905-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 14-November-2023.
2. The applicant, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the respondent" did not attend.

Preliminary Matters

4. The respondent was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing as there was no number provided. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, by prepaid registered mail. The tracking number ([REDACTED]) indicates that the tenant was served notification of a previous hearing date on 16-October-2023 for 06-November-2023. On that date, the respondent did not attend, a family member attended on his behalf and requested a postponement due to an emergency. The postponement was granted until today's date, the family member was informed that notice would be sent as a courtesy ([REDACTED]) however, they should consider the approval of their request for postponement as notice and the hearing would proceed without the tenant should he not attend the agreed upon date. As the respondent was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. During the presentation of the claim an issue of jurisdiction arose, this requires a decision, prior to deciding issues in the Application for Dispute Resolution. The following is this tribunal's decision regarding Jurisdiction.

Issues before the Tribunal

6. This tribunal is required to adjudicate on its jurisdiction to hear this claim.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 2: Definitions, Section 3: Application of the Act, and Section 9: Landlord and tenant relationship.

Issue 1: Jurisdiction

Applicant's Position

9. The applicant revealed during submission of both testimony and evidence that the tenant listed on the rental agreement (LL#02) is not the respondent, but instead the respondent's recently deceased father. The respondent is listed on the rental agreement (LL#02) part 10 as an occupant.
10. The applicant's testimony also determined that they do not have evidence to show if the respondent is the beneficiary or executor of the estate.
11. Additionally, the respondent has not paid rent or entered into a rental agreement with the applicant.

Analysis

12. Section 3 of the *Residential Tenancies Act, 2018* states:

Application of Act

3. (1) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.

(2) Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies to residential premises, residential complexes and rental agreements, whether made before or after this Act comes into force.

(3) The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant

(a) uses or occupies residential premises and

(i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or has agreed to pay rent to the landlord;

(b) makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or

(c) has used or occupied residential premises and

(i) has paid or agreed to pay rent to the landlord, or

(ii) a governmental department or agency has paid or agreed to pay rent to the landlord.

13. As per Section 3.1 of the *Act*, states that the *Act* applies where the relationship of the landlord and tenant exists, when the individual not only has the right to occupy the premises, but also has paid or agreed to pay rent.

14. Although there is a lease agreement established between the landlord and the respondent's parent that allowed for the respondent to occupy the premises, he himself did not enter into the agreement. Nor is there any evidence of any payment of rent during occupancy, or any agreement for him to pay rent. As the applicant and respondent have not entered into a rental agreement, and the respondent has not paid rent the landlord tenant relationship has not been established.

15. The established agreement is with the respondent's deceased parent and in accordance with Section 2 (m)(iii) this relationship would pass to the assign or beneficiary. It has not been established that the respondent is the beneficiary.

16. I determine that this application is not under our jurisdiction.

Decision

17. This claim is not under the jurisdiction of the *Residential Tenancies Act, 2018*.

November 28, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office