

Residential Tenancies Tribunal

Application 2023-1034-NL

Decision 23-1034-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 12-December-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the applicant” 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 ([REDACTED] & [REDACTED]). 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 applicant submitted an affidavit (LL#01) with her application stating that she had served the respondent with notice of the hearing, electronically, on 27-November-2023 at 11:05 a.m., and proof of service of the email was also submitted with his application. As the respondent was properly served, and as any further delay in these proceedings would unfairly disadvantage the applicant, 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 is the following section of the *Residential Tenancies Act, 2018*: Section 3: Application of the Act.

Issue 1: Jurisdiction

Relevant Submissions

9. During the presentation of the claim, it was determined that the applicant and respondent have not entered a rental agreement. The respondent is a sibling who resides with another sibling sharing a family home. The respondent moved into the home when the family patriarch moved into care at a long-term facility. The respondent occupies the main part of the residence, and his sibling resides in the in-law suite. They share the cost of expenses but do not pay rent. The applicant clearly stated that there is no rental agreement, and the tenant has never paid rent.

Analysis

10. 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.

11. The applicant and respondent had not entered into a rental agreement and are not in a landlord/tenant relationship. I determine that this application is not under our jurisdiction.

Summary of Decision

12. This claim is not under the jurisdiction of the Residential Tenancies Act.

December 19, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office