



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNR, MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking compensation related to non-payment of rent and damage or loss under the tenancy agreement due to a breach by the tenant. Both parties were present at the hearing, gave affirmed testimony, and were allowed to cross-examine the other party, and to make submissions during the hearing.

Preliminary Issues:

There were two preliminary issues which arose during the hearing. The first issue was the tenant's failure to serve the landlord with a copy of his written evidence. As the written evidence was substantially the same as his oral submissions I allowed the tenant to read the written evidence into the record and provided the landlord with the opportunity respond to those submissions.

The second issue was whether the applicant in this proceeding has the authority to start and proceed with this application. For the following reasons I find that she did not.

The applicant presents herself as the landlord; however, she is actually a tenant in the same property. The applicant did not provide any documentation to demonstrate that she has the authority to act on behalf of the landlord and to represent his interests.

The tenant has issued rent money in the name of the owner of the property, although it was collected by the applicant.

Analysis:

The *Act* defines a landlord as follows:

"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;

I accept the evidence before me that the applicant is what I will define as a "Head Tenant" and she supplements her obligation to pay rent and utilities to the Landlord by having roommates. The Head Tenant collected a security deposit in cash from the Respondent, who I will define as the "Roommate" and collected rent cheques which were put in the name of the "Property Owner". The Head Tenant collects all of the apportioned rent from her roommates and then makes a deposit for the "Rent" to the "Property Owner".

From the evidence presented in the hearing, I accept that no tenancy agreement ever existed or was contemplated between the "Roommate" and the "Property Owner". As a result the "Head Tenant's" roommates are all considered "Occupants" as defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In addition, I find that the Head Tenant cannot meet the definition of a landlord as defined by the *Act*. The Head Tenant has not provided any evidence that she has the authority to act on behalf of the owner or as the agent and is excluded by subsection (c)



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

of the definition of “landlord” in the Act as she occupies the rental unit. On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a joint tenancy, the *Act* does not apply.

Therefore, I find that neither the “Head Tenant” nor her “Roommate” have any jurisdiction under this *Act*.

Conclusion

The application is dismissed without leave to re-apply as the application lacks jurisdiction under the *Act*.

Dated: July 14, 2009.

Dispute Resolution Officer