



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This face to face hearing dealt with the landlord's request for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Has the applicant established an entitlement to monetary compensation from the respondent under the *Residential Tenancy Act*, Residential Tenancy Regulation, or a tenancy agreement?
2. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony and review of the documentary evidence before me, I make the following findings. The respondent signed an "Application for Tenancy" with respect to renting the subject rental unit effective June 15, 2009 for the monthly rent of \$2,030.00. The applicant conducted reference checks and accepted the application for rental by signing the application form on June 13, 2009 and leaving a message for the respondent on June 15, 2009. On June 15, 2009 the respondent advised the applicant that she did not want to proceed with the tenancy. On June 11 or 12, 2009 the applicant re-posted the rental advertisement on Craigslist and contacted

previously interested prospective tenants; however, the landlord was unable to secure tenants until July 15, 2009.

With this application, the applicant is seeking to recover \$2,030.00 for loss of rent for the period of June 15 - July 14, 2009 from the respondent. Upon enquiry, the applicant testified that it is her normal practice to have prospective tenants complete an application form and then upon obtaining satisfactory reference checks, the parties sign a tenancy agreement. The applicant stated that she showed the respondent a copy of the standard tenancy agreement that she would be required to sign upon being accepted as a tenant. The applicant acknowledged that the parties had not signed a tenancy agreement but the applicant was of the position that by signing the application form the parties had a legally binding agreement to rent the unit.

The respondent acknowledged signing the application form and explained that she had subsequently changed her mind about paying so much in rent after consulting her financial advisor. The respondent claims that she had offered to settle the dispute for \$500.00 at one time. The respondent did not agree with compensating the applicant \$2,030.00 since the applicant waited several days to re-advertise the unit.

The parties provided disputed verbal testimony as to how often a landlord may post advertisements on Craigslist.

The "Application for Tenancy" was provided as evidence for the hearing. The application provides, in part:

"The Applicant agrees that if this offer is accepted, it becomes a binding Agreement and the Applicant will subsequently sign the Landlord's Residential Tenancy Agreement that the Applicant has had an opportunity to examine."

"For the purpose of determining whether this Application for Tenancy is acceptable, the Applicant consents to the Landlord obtaining credit, personal and

employment information on the Applicant from one or more consumer reporting agencies and from other sources of such information....”

Analysis

The *Residential Tenancy Act* applies to tenancy agreements, rental units and residential property. My jurisdiction to resolve disputes is limited to disputes that arise between landlords and tenants with respect to rights, obligations and prohibitions under the *Residential Tenancy Act*, Residential Tenancy Regulation or tenancy agreement.

A tenancy agreement is defined in the Act to mean “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit”.

Section 7 of the Act provides that if a party does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results from the non-compliance; however, the party making the claim for damage or loss must do whatever is reasonable to minimize the damage or loss. Therefore, in order for the applicant to succeed in obtaining a monetary order against the respondent, it must first be determined that the respondent violated the Act, regulations or tenancy agreement.

Section 16 of the Act provides for when the rights and obligations of a landlord and tenant commence. Section 16 provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The evidence provided is consistent here, that from the outset, both parties expected that a written tenancy agreement was required in order for the tenant to possess the

rental unit and the Application for Tenancy document clearly indicates that a tenancy agreement would be presented and signed upon acceptance of the application for tenancy.

I accept that when the tenant offered to rent and the landlord accepted the offer, the Application for Tenancy itself became a contract. Nevertheless, I do not find that the Application for Tenancy in of itself, could properly be construed as a tenancy agreement as defined under the Act.

The Application for Tenancy is what it purports to be: an application made by a prospective renter to provide the property owner with information to assess whether or not the owner will rent their property to the prospective renter. The words are clear, "... the undersigned, offer to rent a rental unit..." It identifies the property which the applicant is offering to rent and it authorizes the landlord to obtain credit, personal and employment information, to assist the landlord in assessing the prospective renter.

Based on the evidence, I find that the Application for Tenancy did not become a tenancy agreement as defined in the Act. Rather, I find the parties had an agreement to enter a tenancy agreement, otherwise known as a collateral agreement. As I have found that a tenancy agreement had not been entered into between the parties, I cannot determine that the respondent has not violated a tenancy agreement. Further, in the absence of a tenancy agreement, I find the rights and obligations provided under Act and the regulations do not apply in this situation.

In light of the above finding, I decline to find jurisdiction to settle this dispute and the applicant is at liberty to seek other legal remedy against the respondent. As the applicant was not successful in this application, I make no award for recovery of the filing fee.

Conclusion

The parties did not have a tenancy agreement as defined under the *Residential Tenancy Act*. The Act does apply in this case and I do not have jurisdiction to resolve this dispute.

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: December 08, 2009.

Dispute Resolution Officer