

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit, for compensation for damage or loss and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

Before this hearing could proceed a determination in relation to jurisdiction was required. I will refer to the tenant as the "applicant" and the landlord as the "respondent;" as indicated on the Application.

The applicant submitted that she rented a room from the respondent, paid her rent directly to the respondent, who was responsible for all communication with the owner of the residential property. The applicant never had any contact with the owner of the residential property and considered herself a tenant of the respondent.

The respondent submitted that since 1998 he has been the tenant of the owner of the residential property. The respondent rents rooms to individuals whom he deems occupants, as the respondent is not acting as agent for the landlord, nor does he have an interest in the property. The respondent collects rent from his roommates and then pays his own rent directly to the property owner. The respondent is solely responsible for the actions of his occupants, as provided by the Act.

Analysis – Jurisdiction

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;

I have determined that the respondent named in the Application is not a landlord, but a tenant of the residential property owner. The respondent fails to meet the definition of “landlord” as he is not the owner of the rental unit, he is not the agent of the landlord and he is a tenant of the property owner.

I have also determined that the applicant is an occupant, which is defined in Residential Tenancy Branch Policy guidelines as:

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.

I base this decision on the evidence and testimony, which failed to support the applicant’s submission that the respondent was a landlord. I find that the respondent allowed the applicant to move into the rental unit and that they shared the rent. The applicant did not have any contact with the owner of the rental unit and, as an occupant did not have any obligations under the Act, or any of the rights provided by the Act.

Therefore, I find that the applicant is not a tenant, but an occupant and that her application is dismissed without leave to reapply as the application lacks jurisdiction under the Act.

Conclusion

The application is dismissed as it does not fall within the jurisdiction of the Act.

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: May 19, 2010.

Dispute Resolution Officer