



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Applicant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The Applicant appeared at the teleconference hearing, provided affirmed testimony and testified he served the Landlord with the Notice of Dispute Resolution in person at the rental unit on January 6, 2011. The Applicant was provided the opportunity to present his evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Is the Applicant a Tenant as defined under the *Residential Tenancy Act*?
2. Is so, has the Landlord breached the Act, regulation, or tenancy agreement?
3. Is so, has the Tenant met the burden of proof for a monetary claim as a result of that breach?

Background and Evidence

The Applicant initially testified that his boyfriend and he began their tenancy agreement back in April or May 2010. He went on to say that he had his own residence initially and later moved in with his boyfriend. His said the Landlord has been trying to evict him from the onset and refused to place him on the tenancy agreement. He confirmed that it was his boyfriend who applied to the advertisement for rent, viewed the suite and entered into the tenancy agreement and that he moved into the rental unit without be placed on the tenancy agreement.

The Applicant advised that he was evicted by the Landlord back in December 2010 and she let his dog out of the unit. His dog is now in the pound and he has to pay \$250.00

to get his dog back after he applies to adopt it. He also wants \$200.00 returned that he had previously paid for rent and then was not allowed to stay in the unit.

The Applicant confirmed he did not submit evidence in support of his claim because the Landlord broke into his unit and stole his documents. He stated there was a police file number created when the Landlord issued another eviction notice last Friday. He states that he was accepted as a Tenant by the Landlord in January and that now his rent is paid directly to the Landlord from Income Assistance.

Analysis

A significant factor in my considerations is the credibility of the testimony. I am required to consider the Applicant's evidence not on the basis of whether his testimony "carried the conviction of the truth", but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Applicant contradicted his own testimony about when he occupied the rental unit. That being said he confirmed several times throughout the hearing that it was his boyfriend who viewed the suite and entered into the written tenancy agreement with the Landlord and that he occupied the rental unit after, without being added to the tenancy agreement, as a tenant.

From the evidence presented in the hearing, I find that no tenancy agreement ever existed or was contemplated between the Applicant and the named Landlord. As a result the Applicant is considered an "Occupant" 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.

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 between the applicant and his boyfriend, the Tenant, the *Act* does not apply.

Therefore, I find that this matter does not fall within the jurisdiction of the Residential Tenancy Act.

Conclusion

I hereby dismiss the applicant's claim, without leave to reapply, for want of jurisdiction.

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: January 24, 2011.

Residential Tenancy Branch