



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement.

The Tenant said he served his Application and Notice of Hearing on the Respondent in person on August 22, 2011. Based on the evidence of the Tenant, I find that the Respondent was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Respondent's absence.

The Respondent submitted a fax dated September 16, 2011 to the Residential in which she argued that the Tenant's application should be dismissed on the grounds that there was no jurisdiction to hear this dispute because the accommodations rented by the Applicant were a Bed and Breakfast. The Respondent also argued that she was not properly named as a party to these proceedings because she is merely the owner of the property from which the Bed and Breakfast business operates and the business is operated solely by her spouse.

Issue(s) to be Decided

1. Is there jurisdiction to hear this dispute?
2. Is the Respondent properly named as a party to these proceedings?
3. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

The Tenant said the rental property is a duplex that contains 7 bedrooms, 2 kitchens and 3 bathrooms. The Respondent and her spouse occupy the neighbouring duplex. The Tenant said he paid \$500.00 per month for the exclusive use of a bedroom and shared use of kitchen, bathroom facilities and other common areas with other tenants. The Tenant said he moved into the rental property on April 23, 2011 and moved out on August 23, 2011.

The Tenant said he had a verbal tenancy agreement with the Respondent's spouse, always paid rent to him and always dealt with him on any tenancy related matters. The Tenant said the Respondent is an owner of the property however he admitted that he never dealt with the Respondent about tenancy matters.

Analysis

The Respondent argued that because the rental property was licensed with the municipality as a Bed and Breakfast, it was excluded from the Act. However, this is not always the case. Section 4(e) of the Act says that “the Act does not apply to living accommodation occupied as vacation or travel accommodation.” However section 2 of the Act says the Act applies to “tenancy agreements, rental units and other residential property.” Consequently, it is not solely the description of the property but rather the use to which the property is put that will determine if it falls under the Act or not.

RTB Policy Guideline #9 (Tenancy Agreements and Licences to Occupy) discusses the difference between a licence to occupy and a residential tenancy. A licence to occupy is a living arrangement whereby a person is given permission to use a property and that permission may be revoked at any time (see RTB Policy Guideline #9 at p. 1). In such a situation the Act will not apply. Occupancy of a hotel room may be a license however if it is occupied pursuant to a tenancy agreement, the *Residential Tenancy Act* applies. However, if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise. Some factors that may weigh against finding there is a tenancy are set out under RTB Policy Guideline #9.

I find on a balance of probabilities that there was a tenancy. In particular, I find that the Tenant paid \$500.00 per month for approximately 4 months for the exclusive use of a bedroom and shared use of kitchen and bathroom facilities with other tenants. Given these facts, I find that the Tenant rented the property as residential accommodations rather than as vacation or travel accommodations. Consequently, I find that the Act does apply to this dispute.

The Respondent also argued that she was not properly named as a Party to these proceedings because she was only the owner of the property. Section 1 of the Act defines a Landlord as follows:

“the owner of a rental unit, the owner’s agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.”

Consequently, an owner of a property may be a Landlord but only if they perform duties and exercise powers of a Landlord such as allowing occupation, accepting rent and so forth. The Tenant admitted that he had no dealings with the Respondent and he provided no evidence to suggest that the Respondent’s spouse was acting as an agent on her behalf. As a result, I find that there is insufficient evidence to conclude that the Respondent is properly named as a party to these proceedings and the Tenant’s application is dismissed *as against her only*. The Tenant has leave to reapply however as against the Respondent’s spouse.

Conclusion

The Tenant's application is dismissed with leave to reapply on the terms set out above. 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: October 06, 2011.

Residential Tenancy Branch