



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, 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 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. I have considered all of the evidence and testimony provided.

Jurisdiction

At the start of the hearing issues were raised which led me to investigate the matter of jurisdiction.

During the hearing the parties agreed to the following facts:

- The respondent signed a tenancy agreement with the owner of the property;
- The respondent was solely responsible for payment rent directly to the property owner;
- The applicants paid a security, pet deposit and rent directly to the respondent;
- The applicants never paid rent to the property owner or had any relationship with the property owner.

Residential Tenancy Branch policy defines an occupant as:

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.

From the testimony of the parties I concluded that the applicants were occupants, who entered into an agreement with the respondent. I determined that the respondent does not meet the definition of landlord, as provided by the Act:

"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*

The respondent was not the property owner, nor was he acting as agent on behalf of the owner. He was a tenant who accepted occupants, as a method of sharing the rent he owed to the landlord.

Therefore, jurisdiction was declined.

Conclusion

Jurisdiction was declined.

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 06, 2011.

Residential Tenancy Branch