



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the applicant for an order of possession of the rental unit, to allow access to the rental unit, a monetary order for money owed or compensation for damages or loss under the Act, and to return all or part of the security deposit.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Issue

The first issue that I must decide is whether the Act has jurisdiction over the parties in order to proceed with the application.

The parties entered into a tenancy agreement and tenancy commenced on November 1, 2011. Rent was \$550.00 per month and the applicant paid a security deposit in the amount of \$275.00. The tenancy ended on November 17, 2011.

The respondent testified that she is not the owner of the rental unit, and she does not exercise any powers or duties under the Act for the owner.

The respondent further testified that she is a tenant and has a written tenancy agreement with the owner of the rental unit. She lives in the rental unit and rents bedrooms to other tenants to pay the rent. They all share the kitchen and bathroom and if the other tenants fail to pay rent she is responsible to pay the full amount of rent to the owner. The other tenants or occupants are not responsible to pay rent to the owner of the rental unit.

The respondent further testified they never entered into a new tenancy agreement with the owner to add the applicant as a co-tenant.

The applicant testified that he signed a tenancy agreement with the respondent to rent a bedroom and that makes her a landlord and he agrees he never sign a tenancy agreement with the owner of the rental unit and was not added as a co-tenant although he asked to be added.

Analysis

The applicant submitted he rented a bedroom from the respondent and that makes her a landlord, under the Act landlord is defined as follows:

“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 respondent under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

In this case the respondent was not acting on behalf of the owner or exercising powers on behalf of the owner. The evidence was the parties entered into a written tenancy agreement, and the applicant was paying rent for a bedroom and sharing the kitchen and bathroom with the respondent and other occupants. I find the respondent is a tenant as defined in the Act and not a landlord.

Occupants as defined in the Residential Tenancy Policy Guideline Manual, Section 13: Where a tenant allows a person who is not a tenant to move into the premises and share 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.

In this case the respondent allowed another person to move into the premises and share rent, under an agreement. The parties agreed they never entered into a new tenancy agreement with the owner of the rental unit to have the applicant added as a co-tenant. Therefore, I find the applicant is an occupant as defined under the guideline and not a tenant.

I find that there is no jurisdiction for the applicant to proceed with his application. Therefore, I dismissed the application without leave to re-apply.

Conclusion

I order that the application is dismissed without leave to re-apply due to the lack of jurisdiction under 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: December 14, 2011.

Residential Tenancy Branch