



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and authority to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural matters

At the commencement of the hearing the applicant stated that he did not receive the respondent's written submission. I determined that the applicant had provided a service address of a residence where he no longer resides. The applicant stated that he did not object to acceptance of the respondent's submissions if the hearing could proceed. I accepted the respondent's written submission and continued with the hearing.

Upon consideration of the written submissions of both parties, I determined that the issue of jurisdiction needed to be decided upon.

Issue(s) to be Decided

Does the Act apply and do I have jurisdiction to resolve this dispute?

Background and Evidence

The applicant was of the position he was a landlord, as a person authorized by the owner to sublet rooms in the residential property.

The parties provided the following evidence by way of verbal testimony and written submissions: The applicant had a tenancy agreement with the owner of the property which came to an end April 30, 2012 because the applicant could not pay the rent owed to the owner.

During his tenancy the applicant was permitted by the owner to “sublet” bedrooms and collect rent from those occupants. The respondent moved into one of the bedrooms and was required to pay the applicant \$500.00 per month. The applicant also collected a \$200.00 security deposit from the respondent.

Upon enquiry, the applicant stated that he was not authorized to make any repairs and that if his tenancy were to end all occupants would have to vacate because his tenancy ended.

In the written submissions and evidence of both parties, the parties refer to each other as roommates. It is also apparent that disputes revolved around the stealing of food from the shared kitchen.

The owner of the property provided a written statement indicating the owner “never received any notification from [the respondent] regarding her abrupt abrogation to her lease.” The owner’s written statement did not indicate she gave the applicant authority to act on her behalf as a landlord of the property. Rather, the owner refers to the relationship between the applicant and the occupants as “inter-roommate relations”.

I was not provided a copy of the tenancy agreement between the owner and the applicant or the agreement between the applicant and respondent even though I heard there was a written agreement.

Analysis

The Act applies to tenancy agreements, rental units and residential property. These terms are all defined by the Act. A tenancy agreement is defined as an agreement between a landlord and tenant respecting possession of a rental unit and use of common areas. In order to find the Act applied I must be satisfied that the parties meet the definition of landlord and tenant.

A landlord, as defined by the Act, includes the owner of the rental unit, the owner’s agent, or another person who acts on behalf of the landlord to permit occupation of the rental unit under a tenancy agreement and exercises the powers and performs duties under the Act or tenancy agreement.

Based upon the evidence before me, I find the applicant does not meet the definition of a landlord under the Act. I make this finding based upon the following considerations:

- The owner of the property provided a written statement which was submitted into evidence and this statement did not confirm the applicant was acting as her agent or on her behalf in order to exercise the powers of a landlord under the Act.
- The occupants refer to their relationship between as that of roommates;
- I was not provided copies of the written agreements between the parties or the applicant and the owner; and,
- The applicant acknowledged he did not have authority of the owner to exercise all the rights and obligations of a landlord under the Act.

I have considered whether the applicant sub-let the rental unit to the respondent. A sub-lease conveys substantially the same interest in the land as is held by the original lessee. In this case, the applicant had right to use of the entire rental unit under his agreement with the owner yet the applicant did not convey this same interest to the respondent. Rather, the respondent was permitted to use only a portion of the rental unit. Therefore, I do not find evidence of a sub-lease.

In light of the above, it is my determination that the applicant and respondent do not have rights or obligations to each other under the *Residential Tenancy Act* and I do not have jurisdiction to resolve a dispute between the parties.

Conclusion

I have declined to accept jurisdiction to resolve this dispute.

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: June 07, 2012.

Residential Tenancy Branch