



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNSD, MNDC

Introduction

This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the respondent's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Although the applicant said that she was representing herself at this hearing, she said that she had support people in attendance with her. She assured me that these support people would not be participating in the hearing, which was indeed the case. One of these support individuals was prepared to provide testimony if necessary. I asked him to absent himself from the room to enable him to participate as a witness if that was her wish. We proceeded with the hearing once this potential witness left the room where the applicant was sitting.

The respondent confirmed that the applicant handed her a 1 Month Notice to End tenancy for Cause (the 1 Month Notice) on June 28, 2012, seeking an end to this tenancy by July 31, 2012. The respondent confirmed that she received a copy of the applicant's dispute resolution hearing package sent by the applicant by registered mail on July 19, 2012. I am satisfied that the applicant served the above documents to the respondent in accordance with the *Act*.

At the commencement of the hearing, the parties agreed that the respondent vacated the premises on July 25, 2012. As such, the applicant said that she no longer needed an Order of Possession. At her request, the application for an Order of Possession was withdrawn.

Issues(s) to be Decided

Does this application fall within the jurisdiction of the *Act*? If so, is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to

retain all or a portion of the respondent's security deposit in partial satisfaction of the monetary award requested?

Background and Evidence

By March 1, 2011, the applicant commenced a residential tenancy agreement with the owner of this property for a downstairs two bedroom rental unit. Although the parties agreed that the respondent subsequently rented one of the two bedrooms, there was conflicting evidence as to when this occurred. Both parties agreed that by April 20, 2012, the respondent was living in one of the two downstairs bedrooms in this rental property.

Both parties agreed that the respondent was paying \$300.00 in monthly rent for her room in this rental property. The parties shared a common bathroom and kitchen facilities. The respondent paid a \$150.00 security deposit for her tenancy.

The applicant testified that she was the respondent's landlord. Her application for a monetary award of \$803.31 resulted from urine and feces damage to the carpeting in the respondent's bedroom caused by the respondent's dog. Although the applicant testified that she had removed the damaged carpet herself, she had not yet replaced it. She did submit written estimates of the cost of purchasing and installing new carpet to replace the damaged carpet. The parties agreed that there was no joint move-in or joint move-out condition inspection for the respondent's tenancy.

The respondent testified that she paid her security deposit to the building manager of this property, the owner's representative. She also testified that she made her monthly rent payments directly to the owner's building manager who then forwarded these payments to the owner of the property. The applicant confirmed the respondent's testimony in this regard. She said that she never received any portion of the respondent's security deposit or her monthly rental payments during the respondent's testimony. She said that despite the respondent's direct payments to the owner's representative, she understood that her oral agreement with the respondent established her as the respondent's landlord and the respondent as her tenant.

Analysis

At the hearing, I initially misunderstood the relationship between the parties because I believed that the applicant was the owner of this property. If that were the case, this application would not have fallen within the jurisdiction of the *Act* because the owner and the tenant shared bathroom and kitchen facilities during this tenancy. Once I understood that the applicant was not the owner of the property, I apologized for my

misunderstanding and advised that the application could not be dismissed on the basis of the shared bathroom and kitchen facilities.

During the course of hearing the parties' evidence, it became apparent that the applicant did not dispute the respondent's claims that:

- there was no written residential tenancy agreement between the parties;
- there was no written residential tenancy agreement for the respondent's tenancy;
- the respondent's security deposit was paid directly to the owner of this property, the applicant's landlord; and
- the respondent's monthly rental payments were paid directly to the owner of this property, the applicant's landlord.

Under the above circumstances, I find that the applicant has not submitted sufficient evidence to demonstrate that any landlord/tenant relationship existed between her and the respondent. In the absence of any residential tenancy agreement to the contrary, I find that the applicant has failed to demonstrate that she had a landlord/tenant relationship with the respondent because the respondent paid her security deposit and all of her monthly rent cheques directly to the owner of the property. I find that the applicant has not shown that she meets the definition of a "landlord" as set out in section 1 of the *Act*. I therefore have no jurisdiction to render a decision on the application before me.

Conclusion

The application for an Order of Possession is withdrawn.

I decline to hear the remaining portion of this application as I have no jurisdiction to consider this application.

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: August 10, 2012

Residential Tenancy Branch