



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the unit, to retain the deposit and compensation for damage or loss under the Act.

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.

Jurisdiction

The applicant applied as a landlord.

The parties agreed that the "landlord" has signed a tenancy agreement with the property owner's agent, who attended the hearing on behalf of the "tenants."

The "landlord" is in fact a tenant who has rented a room and treated that arrangement as a tenancy. The tenancy with the property owner's agent was not disputed; the "landlord" confirmed she pays rent to the property owner's agent and that she is not acting as an agent for the property owner.

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

From the evidence before me I find that the applicant is a tenant, who has an agreement with Mr. J. The applicant then supplements her obligation to pay rent to the landlord by having roommates.

I find that the applicant cannot meet the definition of a landlord as defined by the *Act*. The applicant confirmed that she does not have the authority to act on behalf of the owner or as the agent and is therefore excluded by subsection (c) of the definition of “landlord” in the Act as she occupies the rental unit. On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a joint tenancy, the *Act* does not apply.

Therefore, I find that the respondents are occupants. Occupants are defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

Occupants

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.

Therefore, I decline jurisdiction.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2012.

Residential Tenancy Branch