



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 625873 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on January 1, 2013 the tenant was served copied of the Notice of Hearing package, sent via registered mail to the address provided on the tenancy agreement that had recently been signed.

Registered mail is deemed served on the 5th day after mailing. Therefore, as the landlord served the tenant to an address that had just been provided by the tenant, I find that service has been completed. The tenant did not attend the hearing.

On March 21, 2013 the landlord sent the tenant copies of the evidence package, via registered mail to the tenant's address provided on the tenancy agreement.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Jurisdiction

The landlord stated that she owns a numbered company and that her company rents multiple units from a landlord/property owner. The landlord understands that applicant landlord then rents out units and rooms; but not as agent for the property owner.

The landlord applicant said that she rented a room in her own unit to a student who signed a fixed-term tenancy. The landlord wished to retain the \$500.00 deposit paid and was willing to withdraw the claim for unpaid rent.

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, as owner of her numbered company, is a tenant who has an agreement with a 3rd party. The applicant then appears to supplement her obligation to pay rent to the landlord/property owner by having a roommate.

The applicant collected a security deposit from the respondent, who I will define as the "roommate."

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 of the unit or as the agent and is 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 respondent is an occupant. 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 find that neither the applicant nor the respondent have any jurisdiction under this *Act*.

Conclusion

Jurisdiction is 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: April 04, 2013

Residential Tenancy Branch

