



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: RPP, MNDC, MNSD, FF

For the landlord: MNSD, MNDC, MND, MNR, OPR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for a return of his security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The landlord applied for authority to retain the tenant’s security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss, an order of possession for the rental unit due to unpaid rent, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

Preliminary issue-During the hearing, the landlord made mention of his claim, which caused me to ask him if he had filed his own application for dispute resolution. The landlord said that he had filed an application; however that application was not before me at the hearing. I learned that the landlord had filed an application as stated, which was set for hearing as a cross application to the tenant’s application at this hearing. I informed both the landlord and the tenant that prior to issuing a Decision, I would obtain the landlord’s file and review the evidence, which I did. The landlord’s evidence, however, consisted mainly of copies of photographs of the rental unit and did not persuade me to change my decision of which I informed the parties at the hearing and which will be addressed later in this Decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Is the landlord entitled to monetary compensation and to recover the filing fee?

Does this dispute fall under jurisdiction of the Residential Tenancy Act?

Background and Evidence

The rental unit in question here is in the lower suite and the landlord lives in the upper suite.

During the hearing, the landlord made mention of the fact that when the tenant did not pay him rent, he had to make up the difference to pay to the owner. These statements led me to question the parties further as to whether or not this dispute fell under the jurisdiction of the Act.

In response to my question, the landlord said that he actually was a tenant of the owner of the residential property, and rented out the lower suite to the tenant and another tenant said to be the roommate of the tenant, which he used to pay his monthly rent to the owner.

I asked the landlord if he acted for the owner in renting out the property, and his response was that he did not. After I questioned the landlord further, he changed his statement to say that he was an "indirect agent," possibly due to his contention that the owner was aware that he rented out the lower suite to two tenants.

The tenant said that he was never made aware that the landlord here was not the owner of the residential property.

Analysis

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;

I accept the evidence before me that the landlord is a tenant of the owner/landlord ("owner") and that he supplements his obligation to pay rent to the owner by renting out a portion of his rental unit. The landlord collected rent cheques from the tenant and his roommate, which were put into his account, and then paid rent to the owner.

From the evidence presented in the hearing, I accept that no tenancy agreement ever existed or was contemplated between the tenant here and the owner. As a result I find that the applicant/tenant is considered an "Occupant" as 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.

In addition, I find that the applicant cannot meet the definition of a landlord as defined by the *Act*. The applicant has not provided any evidence that he has the authority to act on behalf of the owner or as the agent and is excluded by subsection (c) of the definition of "landlord" in the *Act* as she occupies the rental unit. I find the owner's knowledge that the landlord was supplementing his income does not amount to being an agent for the owner.

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 this dispute as between the parties listed here as tenant and landlord does not fall within the jurisdiction of the *Act*.

Conclusion

I therefore decline to accept jurisdiction of the two applicants' applications.

The parties are at liberty to seek the appropriate legal remedy to 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 21, 2013

Residential Tenancy Branch