



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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.

Background and Evidence

The parties agreed that the commencing December 2012 the tenant rented a basement room from the respondent. The respondent is a tenant who rents the home from the owner; she resides in the home.

The owner of the home has given the respondent on this application the right to rent out rooms; the owner has no relationship with people who rent rooms and does not have the respondent act as his agent.

The tenant agreed that she paid her rent and deposit to the respondent and that the respondent was in fact a tenant of the home owner.

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 applicant is in fact a roommate who pays rent to a tenant, to assist her in paying rent for the house.

The tenant of the rental unit collects the apportioned rent from her roommate and then makes a deposit for the rent to the property owner, who is the landlord.

From the evidence presented in the hearing, I accept that no tenancy agreement ever existed or was contemplated between the applicant and the property owner. As a result the applicant 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 respondent cannot meet the definition of a landlord as defined by the *Act*. There was agreement that the respondent does not have 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. 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 decline jurisdiction under this *Act*.

The parties remained on the conference call after the hearing ended, in an attempt to reach a mutual agreement.

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: July 24, 2013

Residential Tenancy Branch