



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and a monetary order for a return of his security deposit.

The applicant/tenant (hereafter "applicant") attended; the respondent/landlord (hereafter "respondent") did not attend the telephone conference call hearing.

The applicant testified that he served the respondent with the Application for Dispute Resolution and Notice of Hearing by registered mail on October 23, 2013. The applicant supplied the registered mail receipt and customer receipt showing the tracking number of the registered mail.

I find the respondent was served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act (the "Act") and the hearing proceeded in the respondent's absence.

The applicant was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue- Due to the information contained in the applicant's application, at the outset of the hearing the issue of jurisdiction under the Residential Tenancy Act was explored and dealt with.

Issue(s) to be Decided

Is the applicant entitled to monetary compensation?

Does the Residential Tenancy Act apply to this dispute and do I have jurisdiction to decide this dispute?

Background and Evidence

In his documentary evidence the applicant submitted that he rented a bedroom from the respondent, who himself was a tenant in an apartment. The applicant further submitted that he paid the respondent monthly rent and had paid him a security deposit.

The applicant confirmed that he understood the respondent did not own the rental unit, and that his rent supplemented the monthly rent paid by the respondent to his landlord.

The applicant was unsure if the owner of the apartment building, the landlord of the respondent, knew if he, the applicant, resided in the building.

Analysis

The Act defines a landlord, in relation to a rental unit, as the owner, the agent for the owner, or someone on behalf of the owner who permits occupation of the rental unit and performs duties under the Act or the tenancy agreement.

I accept the evidence before me that the listed landlord, the respondent here, is a tenant of the owner and that he supplemented his obligation to pay rent to the owner by renting out a portion of his rental unit.

In addition, I find that the respondent cannot meet the definition of a landlord as defined by the *Act*. There is no evidence that the respondent 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 he occupies the rental unit.

Additionally, I find that the applicant/tenant does not have the rights conferred under the Residential Tenancy Act to a tenant; for instance, the applicant here cannot request a repair to the rental unit to the owner, or to allow a rent reduction, or request an order changing the locks, among other things.

As a result I find that the applicant is considered an “Occupant” as defined in the *Residential Tenancy Policy Guideline*, 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.

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

Due to the above, I decline to accept jurisdiction of the applicant’s application and I find that this dispute between the parties is not as between landlord and tenant.

The applicant is 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: January 29, 2014

Residential Tenancy Branch

