



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes SS, MNSD, MNR, MNDC, MND, FF

Introduction

This hearing dealt with two related applications. One file was the tenant's application for a monetary order. The other filed was the landlord's application for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties asked for an order allowing service of the application for dispute resolution and evidence in different way than required by the Act.

At the first day set for hearing it was revealed that the tenant had served his application for dispute resolution on the landlords by registered mail. However, before sending the application to the landlords he had blacked out his address for service. The landlords had issued their own application for dispute resolution but were unable to serve it on the landlord because they had no address for him.

After some discussion the tenant provided an address and a fax number at which the landlord could serve the tenant. The hearing was adjourned to a date and time convenient for all parties to give the landlords time to serve their application for dispute resolution and notice of hearing on the tenant.

The hearing reconvened on January 29, 2014. By then the landlords had serve their application for dispute resolution on the tenant by registered mail. They filed proof of service by registered mail which showed that the documents were actually received by the tenant on January 15, 2014. The tenant filed a response to the landlords' evidence.

Section 66(1) allows an arbitrator to extend the time limit for serving an application for dispute resolution on the respondent and section 71(2) allows an arbitrator to order that a document has been sufficiently served for the purposes of the Act on a date specified by the arbitrator. Pursuant to both sections I order that the landlords' application for dispute resolution was properly served on the tenant on January 15, 2014.

As the parties and circumstances are the same for both applications, one decision will be rendered for both.

Issue(s) to be Decided

- Does the Residential Tenancy Branch have jurisdiction over this dispute?
- If so, is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

The month-to-month tenancy commenced June 1, 2012. The monthly rent of \$1100.00 was due on the first day of the month. A move-in inspection was conducted and a move-in condition inspection report completed. In addition to the rent the tenant was responsible for half the utilities. A security deposit of \$500.00 was paid several months later.

The rental unit is the lower level of a house. The landlords live in the upper level. The house is located on a rural property. There are two other houses located on the same property, both rented. The entire property is owned by a third individual. The landlords rent the house from him and sub-let the lower level to the tenant.

The landlords and the tenant were acquainted with each other prior to the start of this tenancy. Over time tensions developed between the landlords and the next door neighbours and between the landlords and the tenant and the tenant's girlfriend. Over a period of several months there were some very unpleasant incidents between the parties.

The tenant testified that after an incident on July 19 he decided he had to remove himself and his two sons from the situation. They all moved into his girlfriend's home. By the end of July he had found a new place to live but was not able to move into it until mid-August. He moved most of his furniture out of the rental unit and into storage by the end of July.

In a letter dated July 31, 2013, the tenant gave written notice to end tenancy effective August 31. He paid the landlord's \$600.00 towards the August rent and suggested that the security deposit could be used for the balance due.

The tenant also suggested that a move-out inspection could be conducted on or before August 9. The inspection was not conducted on that date. In fact, the tenant was not ready for inspection at that time.

The tenant did not provide the landlord with a forwarding address in writing and has been very careful not to do so. As described previously, it was only at the first day set for hearing that the tenant gave the landlords any address at which documents could be served upon him.

The landlords left a notice for a move-out inspection in the mailbox. The tenant acknowledged receipt of the notice but did not attend.

The landlords left a Notice of Final Opportunity to Schedule a Condition Inspection in the mailbox. The tenant acknowledged receipt of the notice but did not attend the inspection.

The tenant finished moving out the last of his items on August 31. He testified that he cleaned the unit as well as he could but he did not shampoo the carpets. He left the keys on the counter of the rental unit.

New tenants moved into the unit on September 1.

The tenant claims \$3300.00 – an amount equal to three months' rent – as compensation for the cost of temporary housing, loss of wages during the transition, and the costs of the unplanned move. The landlords claimed \$3300.00 for emotional duress. Both parties filed documentation providing their version of the events that occurred during this tenancy; neither filed any documentation in support of these particular claims such as moving expenses or lost wages.

The landlords also claimed the balance of the August rent in the amount of \$600.00; the tenant's share of the July and August utilities in the amount of \$161.00; and carpet cleaning in the amount of \$140.00. Documentation in support of these claims was filed.

Analysis

The Residential Tenancy Branch has been created by statute, the *Residential Tenancy Act*, and can only hear and resolve disputes that are within the jurisdiction created by the statute.

Section 2 of the *Act* states that the *Act* applies to tenancy agreements. It defines "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy.

"Landlord" is defined as:

- the owner of the rental unit;
- the owner's agent;
- a person acting on behalf of the owner;
- a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement. (Emphasis added).

The landlords are renting the whole house from the owner of the property. This makes them “a tenant occupying a rental unit”. As such they are specifically excluded from the definition of landlord and therefore, any arrangement they made to sublet a portion of the rental unit is excluded from the operation of the *Residential Tenancy Act*.

The Residential Tenancy Branch does not have jurisdiction over this dispute.

Conclusion

Both applications are dismissed because the Residential Tenancy Branch does not have jurisdiction over 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: February 24, 2014

Residential Tenancy Branch

