



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution under the Residential Tenancy Act (the “Act”), made by the Applicant and claiming for the return of a security deposit paid to the Respondent.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

I note that the Applicant had filed two Applications prior to this one. The Applicant did not attend for either of the first two hearings regarding those Applications. For ease of reference, the file numbers for those Applications are reproduced on the cover of this decision.

I further note that the Applicant had to be cautioned during the course of the hearing for being interruptive and for making comments about the Respondent while he was testifying.

Issue(s) to be Decided

Is there jurisdiction for this to be heard under the Act?

If so, is the Applicant entitled to the return of the security deposit?

Background and Evidence

The Applicant testified that she paid a deposit of \$250.00 to the Respondent in November of 2013, and moved into a room in the property in the middle of December 2013. The property apparently consists of a large older home with approximately 12 rooms rented to different people.

The Applicant testified that she did not move out of the room she occupied, but that the Respondent locked her out of the room and would not let her back in. The Applicant testified she was able to contact an Agent for the Respondent and was able to move her property out in March of 2014. She testified she provided the Respondent with the forwarding address to return the deposit to in March of 2014, in an email.

The Applicant testified there was no tenancy agreement and she just gave the Respondent money for rent and for the deposit. She testified that the Respondent was seldom at the property and had an Agent acting for him.

The Respondent argues that the Act does not apply to this situation, as he is the owner of the property and shares kitchen and bathroom facilities with the renters there. He testified he has lived in the subject property since he was born in 1965, and his parents owned the home prior to him. The Respondent testified he has several different rooms in the property that he rents out to different people.

The Respondent testified that the property is his main residence and has supplied numerous pieces of correspondence addressed to him at the property address, or other documents identifying his address as the property address. These included life insurance information, banking information from two different financial institutions, a TV cable bill, a hydro bill, ICBC correspondence, and his provincial drivers' license and a Canadian passport.

The Respondent testified that he is a musician and travels to approximately 45 different engagements during the year, plus he has a holiday cabin on an island located near the property; however, when he is not on the road or at the holiday cabin, he lives at the subject property. He testified that the holiday cabin does not have running water or sewage hook up, so he is not able to shower there.

He testified that he occupies an empty room in the subject building, or will sleep in an outbuilding on the property, but must use the kitchen and bathroom facilities in the subject building when he is there. He testified that he has approval from the local municipality to have 12 rooms rented out to boarders, and there are four shared bathrooms and one kitchen in the subject building.

The Respondent has also provided a copy of a previous decision from the Branch regarding himself and a different claimant from 2012. In that decision the Arbitrator found that there was no jurisdiction under the Act.

The Respondent testified that when the Applicant first came to rent the room, he explained the circumstances of him living there to her, and stated when he was there he cleaned the bathroom she was using and shared the kitchen with her and the other boarders in the building.

The Respondent further testified that when the Applicant left the building she owed him rent and she told him that he could apply the deposit to the rent owed. He alleged that the Applicant removed property from the building which did not belong to her.

The Applicant agreed that she suggested to the Applicant he could keep the deposit toward the rent owed to her, but alleged he did not accept this and wanted all the rent due.

The Applicant argued that the Respondent does not live at the subject property. She argued he lives at the holiday cabin and only uses the address for the subject building because there is no mail delivery at the holiday cabin. She argued there is no vacant room in the building. The Applicant did agree that the Respondent is the owner of the property and that the outbuilding at the property does not have a kitchen or bathroom facility.

The Respondent replied that there is mail delivery on the island where the holiday cabin is located, although since he does not reside there, his mail goes to the subject building where he lives.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the civil standard, that is, on a balance of probabilities.

Section 4(c) of the Act includes certain exemptions, including property where the kitchen or bathroom is shared with the owner of the property:

4 This Act does not apply to

...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

...

[Reproduced as written.]

Based on all of the above, the evidence and the affirmed testimony, and on a balance of probabilities, I find there is no jurisdiction under the Act for this matter and I dismiss the Application without leave to reapply.

I find the Applicant had insufficient evidence to prove that a tenancy existed or that the Respondent did not own the property. I further find the evidence from the Respondent substantiates that he shared the kitchen with the Applicant in the living accommodation, and that this is his residence.

The Act does not enumerate how much time the owner must be living at the accommodation since that is a fact based determination subject to individual circumstances; however, in this circumstance I accept the evidence of the Respondent that when he is not travelling his residence is at the subject property. I base this finding on the numerous pieces of correspondence and government issued identification he supplied in evidence.

As explained in Policy Guideline 27 to the Act, the legislation does not confer on the Residential Tenancy Branch the authority to hear all disputes regarding every type of relationship between two parties.

This decision is final and binding on the parties and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 14, 2014

Residential Tenancy Branch

