



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* ("the Act") for:

- authorization to retain all or a portion of the 'tenant's' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- another order for a remedy not specified under the Act; and
- authorization to recover the filing fee for this application from the 'tenant' pursuant to section 72.

Preliminary Matter: Jurisdiction

Both parties testified that the respondent placed an advertisement online (Craigslist) to rent a room. The applicant responded to that advertisement, visited the rental unit and agreed to take a room within the rental unit. The applicant testified that he also resided in the rental unit. The applicant's undisputed testimony was that he never intended to vacate the residence and that he was merely looking for someone to share the costs of the unit with him.

Under the *Residential Tenancy Act* definitions section (section 1), a landlord is defined;

"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 owner, ...
- (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 respondent, when the context requires this;

Contrary to the wording of section 1(c), the applicant in this matter is a tenant occupying the rental unit and therefore he is excluded from being considered a landlord under subsection 1(c) or any of the other categories that define a landlord under the *Act*.

Residential Tenancy Policy Guideline No.19 addresses alternative agreements, including assigning and subletting. The applicant submitted that he may be considered a sub-landlord. The Policy Guideline states,

A sublease is a lease given by the applicant... of residential premises to a third person (the sub-tenant or sub-lessee). ... The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the sub-landlord of the sub-tenant.

The policy with respect to a sublease is that the sub-landlord (the original tenant) retains their obligations with respect to the tenancy. The policy further states;

A tenant may assign or sublet his or her interest in a tenancy agreement or lease with the consent of the landlord. ... the proposed new tenant is not a party to the tenancy agreement until such time as the respondent has agreed to assignment or sublet, and the formal transfer is made.

The applicant testified that the landlord was aware that he was renting out his bedroom and he testified that he had the consent of the landlord. The applicant had no documents or witness testimony to support his testimony. Both parties testified that the respondent was not made a party of to the primary tenancy agreement with the owner of this rental unit in any written form.

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. As with all tenancy matters, this agreement should be in writing and should address the use of the unit itself as well as common areas, services and facilities. The applicant testified that there was an oral agreement that the respondent pay \$650.00 on the first of each month and that she have access to the kitchen and bathroom. While there may have been some informal understanding between the applicant and respondent, there

was no written agreement between parties to suggest that there was an intention to create a tenancy.

The applicant testified that he and the respondent socialized with each other, smoking together and spending time with friends together. The respondent testified that, at a certain point in their time together, the applicant became angry, dominating and intimidating. She testified that he would text and telephone her relentlessly, even calling her at work. She testified that the police have been called regarding allegations of harassment. The applicant confirmed the respondent's testimony with respect to a call to work and the police involvement.

The applicant sought to be reimbursed for; rental loss for January given lack of notice; the cost of his own time in cleaning the rented room; damage to the rental room; lock replacement; missing work and emotional damage; as well as filing fees and his time in creating and delivering the application for dispute resolution package. He testified that he had retained the security deposit provided by the respondent. The respondent stated that he could keep the deposit in return for her lack of more notice.

I find that the applicant and respondent were roommates, perhaps co-tenants. However, based on the applicant's description of the rental arrangement with the respondent, I find that this arrangement was neither a tenancy nor a sublet and therefore the arrangement is not governed by the *Residential Tenancy*. As a result, I find that I do not have jurisdiction in this matter, and the application is effectively dismissed.

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: March 23, 2015

Residential Tenancy Branch

