



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction and Preliminary Matters

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for a return of his security deposit and for recovery of the filing fee paid for this application.

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Each party confirmed that they had received the other party's evidence and neither party raised any issues regarding service of the application or the evidence.

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.

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.

Issue(s) to be Decided

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

If so, is the applicant entitled to monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

The documentary evidence submitted by both parties included a written tenancy agreement listing another person as landlord, or “BT”, and the respondent here, “BB”, as the only tenant. The applicant was listed as an adult person other than the tenant who would occupy the rental unit. BT represents the property management company representing the owner.

The applicant submitted that he paid a security deposit to BB and that he paid his monthly rent to BB as well. The applicant confirmed that BB paid the monthly rent obligation under the written tenancy agreement to BT, and that he assumed his payments to BB were used to supplement those payments.

The applicant confirmed he has never paid BT any monthly rent payments or a security deposit.

The respondent here, BB, submitted that the applicant was not a tenant for purposes of this tenancy agreement.

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 landlord listed in the present applicant, the respondent here, is a tenant of the actual owner’s agent, or the property management company representing the owner, and that BB supplemented the monthly rent obligation to the landlord with the applicant’s monthly rent paid to BB.

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 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.

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: May 5, 2015

Residential Tenancy Branch

