



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, MNR, FF

Introduction and Preliminary Matters

This hearing was convened as a result of the applicant/landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The applicant/landlord applied for authority to keep all or part of the respondent/tenant's security deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit, and alleged unpaid rent, and for recovery of the filing fee paid for this application.

The applicant/landlord and respondent/tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, due to the information contained in the applicant's application and evidence, the issue of jurisdiction under the Act was discussed with the parties.

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?

Background and Evidence

In her documentary evidence the applicant submitted that she rented a 2 bedroom condominium from the owner and in turn, rented one of the bedrooms to the respondent here.

The applicant confirmed that she used the respondent's rent payments to supplement her monthly rent paid to the owner and that the respondent was not listed on the tenancy agreement with the owner or otherwise have any causal connection to the owner.

The respondent confirmed further that she was not acting as agent for the owner regarding the respondent's living accommodation.

Analysis

Section 1 of 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 applicant here, is a tenant of the owner and that she supplemented her obligation to pay rent to the owner by renting out a portion of the rental unit.

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

Additionally, I find that the respondent/tenant does not have the rights conferred under the Act to a tenant; for instance, the respondent 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 respondent 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 landlord and tenant 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: August 9, 2015

Residential Tenancy Branch

