



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution seeking return of his personal property and a monetary order.

The hearing was conducted via teleconference and was attended by the applicant and the respondent.

These matters were originally set to be heard on June 3, 2015, however no one attended the hearing and the original Arbitrator dismissed the applicant's claim. However, the applicant applied for and was granted a new hearing by way of Review Consideration. This hearing was set as a result of that Review Consideration decision.

At the outset of the hearing the respondent submitted that he had rented the dispute address and works outside of his home community. He stated that he rented only a room to the applicant and that he did return two times during the tenancy and stayed at the unit. The applicant testified the respondent only returned once to the rental unit during the time he was living there and only stayed there because he had no other place to go.

The respondent testified that all of the household effects belonged to him and he was only renting the room to the applicant and that he could use the kitchen and other facilities in the unit. The applicant submitted that he used one of the respondent's child's rooms; that his room used the other child's room and that he himself had stayed in the applicant's room one time.

In the case of verbal agreements, I find that where terms are clear and both parties agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

The burden is on the party making the claim to provide sufficient evidence to establish the circumstances that give rise to their claim warrant adjudication in their favour. In the

case before me, I find the burden rests with the applicant to establish that this tenancy falls within the jurisdiction of the *Residential Tenancy Act (Act)*.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

While the applicant did submit a letter from the respondent's ex-partner that states the applicant "sublet" the respondent's rental unit, there was no evidence before me as to whether or not the ex-partner had intimate knowledge of the specific details of the agreement between the parties. As such, I find that this letter does not provide any assistance in determining if the tenancy falls within the jurisdiction of the *Act*.

Section 1 of the Act defines a landlord, in relation to a rental unit, as any of the following:

- The owner of the rental unit, the owner's agent or another person who, on behalf of the landlord
 - Permits occupation of the rental unit under a tenancy agreement or
 - Exercises powers and performs duties under the *Act* or the tenancy agreement;
- The heirs, assigns, personal representatives and successors in title to a person referred to above;
- 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 or the *Act* in relation to the rental unit.

The term "occupy" does not require the tenant to actually reside in the rental unit but rather to have possession of the rental unit. From the undisputed testimony of the respondent, he had possession of the rental unit from his landlord and his belongings were in the rental unit.

From the submissions of both parties and the failure of the applicant to provide any documentary evidence to establish to the contrary, I find that the respondent did occupy the rental unit. As such, I find respondent is not a landlord as define under the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to return his piano; to a monetary order for compensation for failure to return the tenant's piano; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)* and Sections 25 and 26 of the Residential Tenancy Regulation (regulation).

Conclusion

Based on the above, I decline jurisdiction in these matters and dismiss this Application for Dispute Resolution in its entirety. I note the applicant remains at liberty to seek remedy through a court of competent jurisdiction.

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 18, 2015

Residential Tenancy Branch

