



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPT, RR, FF, O

Introduction

This hearing dealt with a tenant's original and amended application for an Order of Possession; authorization for a rent reduction; and, return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issue – Jurisdiction

The landlord questioned whether the Act applies to this tenancy since the landlord and tenant shared a bathroom and kitchen. The landlord acknowledged that she does not own the property but that she is authorized by the owner to rent out rooms and that she acts as caretaker of the property.

The Act provides for specific living arrangements that are excluded from the Act. One such arrangement is where the owner of the property and the tenant share a kitchen or bathroom. In this case, the landlord is not an owner and I find that exclusion does not apply in this case. I also considered whether the named landlord meets the definition of landlord as provided under the Act. The Act defines landlord to include a person who acts on behalf of the owner and

- (i) permits occupation of the rental unit under a tenancy agreement,
- or
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service

Since the landlord has authorization from the owner to rent out rooms at the property and collected rent and a security deposit from the tenant, I was satisfied the landlord named in this case meets the definition of landlord that is provided under the Act. Therefore, I was satisfied that the Act applies to this tenancy and that I had jurisdiction to resolve this dispute.

Preliminary Issues – Service

The tenant submitted that she served the landlord with all pages of her original application by registered mail sent on October 7, 2015. The landlord acknowledged receipt of the October 7, 2015 package but stated the first page of the tenant's application was missing.

The tenant submitted that she served the landlord with an "Amendment to an Application for Dispute Resolution" by registered mail sent on November 3, 2015. The landlord stated she did not receive the amendment. The tenant was asked to provide me with the registered mail tracking number but she stated she could not locate it.

Since the tenant could not sufficiently prove she mailed the amendment to the landlord I proceeded to determine whether the landlord was sufficiently clear as to the nature of the dispute as filed with the original application. The landlord stated that she was not clear as to what the monetary amount appearing on the original application represented. The tenant explained that the monetary amount does represent her security deposit. The landlord stated the amount indicated on the application is not the same as the security deposit collected.

I heard that the tenancy ended when the tenant moved out on October 10, 2015 but that the tenant had not served the landlord with a forwarding address, in writing, prior to filing her application or amended application. Accordingly, I found the tenant's request for return of the security deposit to be premature in any event since a tenant must provide the landlord with a forwarding address, in writing, before requesting return of a security deposit.

The tenant confirmed that the address provided to the landlord in a text message and on the original application is her forwarding address at which she may be served documents. The landlord acknowledged that she has the address. Therefore, **during the hearing, I put the landlord on notice that she is considered to be in receipt of the tenant's forwarding address, in writing, as of this date, and must take action to dispose of the security deposit in a manner that complies with the Act.**

The tenant confirmed that she does not seek to regain possession of the unit. Therefore, I dismissed her request for an Order of Possession.

Finally, having heard the tenancy has ended I found the tenant's request to reduce rent payable to be moot at this point. The tenant was informed of her right to request a

Monetary Order for any damages or losses she may have suffered due to the landlord's violation of the Act, regulation or tenancy agreement, if any.

Conclusion

The tenant's request for an Order of Possession and rent reduction were found to be moot at the time of the hearing.

The tenant's request for return of the security deposit was not proven to be sufficiently served and but the request was premature in any event. However, the landlord was put on notice during the hearing that the landlord is considered to be in receipt of the tenant's forwarding address as of the date of this hearing and must take action to dispose of the security deposit in a manner that complies with the Act.

The tenant remains at liberty to file another application to seek a Monetary Order for any damages or losses she may have suffered as a result of the landlord's violation of the Act, regulations or tenancy agreement, if any.

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: November 12, 2015

Residential Tenancy Branch

