



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on August 4, 2015 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 14, 2015 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Was the living arrangement between the Parties subject to the Act?

Background and Evidence

The Landlord is a tenant of a unit with a number of bedrooms some time ago. In June 2015 the Landlord then rented one of the bedrooms in that unit to the Tenants and collected a security deposit. The Landlord continued to live in the unit and had no

intention of moving out of the unit for any period of time. The Tenants moved out of the unit and have started a small claims action against the Landlord to recover monies paid to the Landlord.

Analysis

Section 1 of the Act defines a landlord as a person, other than a tenant occupying the rental unit. Residential Policy Guideline # 19 sets out the policy in relation to assignments and sublets. Specifically a sublet is set out as a lease given by the tenant or lessee of residential premises to a third person.

As the person named in both applications as the Landlord was a tenant occupying the rental unit I find that this person is not a landlord under the Act. Further the person who rented out the bedroom did not sublet the bedroom as a sublet requires the departure from the unit by the person subletting the unit. As a result, I find that the Act does not apply to either Party and I dismiss both applications.

Conclusion

The applications of both Parties are 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: December 07, 2015

Residential Tenancy Branch

