



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (“the Act”) for authorization to obtain a return of all or a portion of a security deposit pursuant to section 38. Both parties attended this reconvened conference. On the original hearing date, technical difficulties did not allow the conference to proceed.

The respondent attended stating that he had only been advised by the Residential Tenancy Branch (“RTB”) of this reconvened hearing. The applicant attended providing testimony and documentary proof that he had sent his Application for Dispute Resolution package by registered mail to the respondent on August 7, 2015. The respondent was provided with the registered mail tracking number and he confirmed that it had been sent to the correct address and he had failed to pick the package up in error. Pursuant to section 89 and Policy Guideline No. 12 regarding deemed service of hearing documents, I find that the landlord was deemed served with the tenant’s Application for Dispute Resolution on August 12, 2015.

Preliminary Issue – Jurisdiction

The applicant applied for return of a \$325.00 security deposit, claiming he resided in the respondent’s home as a part of a residential tenancy agreement. The applicant did not submit a copy of an agreement to reflect the arrangement between the parties. He testified that he believed that the respondent rented the residential premises and was therefore a sub-landlord. The applicant confirmed the testimony of the respondent that he lived within the residential home in an upstairs bedroom where the respondent also lived. He testified that he had no lock on his door, that he had an ensuite bath accessible by all in the household and that he shared a common kitchen with the respondent.

Under the *Residential Tenancy Act*, a “tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit”. Section 2 of the *Act* indicates what types of agreements the *Act* applies to; particularly “tenancy agreements, rental units and other residential property.” Section 4 of the *Act* indicates what the *Act* does not apply to and includes but is not limited to,

- (a) living accommodation rented by a not for profit housing cooperative....,
- (b) living accommodation owned or operated by an educational institution....,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,

...

The respondent argued that this living arrangement is properly characterized by both section 4(c) well as section 4(e) of the *Act*. The respondent provided undisputed sworn testimony that the agreement between the parties was for a period of 3 months and was described specifically as a ‘vacation rental’ in the agreement signed by both parties. Neither party submitted a copy of the agreement for my consideration. Based on the testimony of both parties at this hearing, I find that this living arrangement is, as stated by the landlord appropriately characterized by 4(c) of the *Act*.

Given that the respondent provided undisputed sworn testimony with regard to the nature of this living agreement and given that the applicant had no evidence to support his position or rebut the testimony of the respondent, I am inclined to decline jurisdiction in this matter. The applicant bears the burden to provide sufficient proof of his position

on a balance of probabilities. I find the applicant's lack of evidence and his own admissions in his testimony equate to a lack of proof of his position. I find that the applicant has not shown that this agreement can be characterized as a residential tenancy agreement and therefore, I cannot consider his claim.

Conclusion

I decline jurisdiction to hear this matter.

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: February 11, 2016

Residential Tenancy Branch

