



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RPP FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss pursuant to section 67;
- an order for the landlord to return the tenant's personal property pursuant to section 65;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The respondent did not attend this hearing, although I waited until 9:35 a.m. in order to enable the respondent to connect with this teleconference hearing scheduled for 9:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on May 11, 2016, a copy of the Application for Dispute Resolution including the Notice of Hearing and evidence package was sent to the respondent by registered mail. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the respondent was served with the Application for Dispute Resolution and Notice of Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the respondent.

Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the tenant entitled to a monetary order for compensation for damage or loss, an order for the return of personal property and recovery of the filing fee?

Background and Evidence

The tenant placed an ad on Craigslist seeking accommodations and she was contacted by the respondent who offered to share her apartment with the tenant. The respondent lived in a 2 bedroom apartment with 1 kitchen and 1 bathroom. The tenant paid a \$250.00 security deposit and agreed to pay \$500.00 per month in rent to share this accommodation with the respondent.

A written tenancy agreement was not signed. The tenant testified that the arrangement was to share kitchen and bathroom facilities with the respondent. The tenant did not know if the respondent was the owner of the rental unit but stated that it was most likely that the respondent rented the apartment.

The tenant is claiming reimbursement for the \$500.00 rent paid for the month of May 2016 as she alleges she was evicted after the first day. She is also claiming \$31.48 as reimbursement for cost of groceries left in the apartment and an order that the respondent return a prayer book left in the apartment.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Section 4(c) of the Act stipulates that the Act does not apply to:

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The respondent did not attend the hearing or provide any submissions on whether or not she was the "owner" of the apartment. The tenant testified that she did not know whether the respondent was the owner and believed that she was most likely renting the apartment. I do not have sufficient evidence before me to make a finding that the respondent is the owner of the apartment therefore the exclusion under section 4(c) of the Act would not apply.

However, if the respondent is a tenant rather than an owner of the apartment, the agreement entered into between the parties is not a tenancy agreement as defined under the Act and the respondent is not a landlord as defined under the Act.

Pursuant to section 2 of the Act, the Act applies to **tenancy agreements**, rental units and other residential property.

A tenancy agreement is defined under section 1 of the Act as follows:

"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;

Landlord is defined under section 1 of the Act as follows:

"landlord", in relation to a rental unit, includes any of the following:

...

- (c) a person, **other than a tenant occupying the rental unit**, who
 - (i) is entitled to possession of the rental unit, and

- (ii) *exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

The definition of a tenancy agreement under the Act implies that it is an agreement between a landlord and a tenant. The definition of landlord under the Act specifically excludes a **tenant occupying the rental unit**.

The tenant entered into an agreement with another tenant to share accommodations with that tenant. I do not have jurisdiction under the Act for this type of living arrangement.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that I do not have jurisdiction over 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: June 07, 2016

Residential Tenancy Branch