



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution in which the Applicant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Applicant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Respondent, via registered mail, although he cannot recall the date of service. The Applicant submitted Canada Post documentation that shows he sent documents to the Respondent on April 14, 2016. The Respondent acknowledged receiving documents from the Applicant in April of 2016; however he stated that he has misplaced those documents.

The Respondent stated that he submitted 12 pages of evidence to the Residential Tenancy Branch on September 07, 2016, which he did not serve to the Applicant as evidence for these proceedings. As those documents were not served to the Applicant as evidence for these proceedings, they were not accepted as evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

At the hearing the Applicant stated that in addition to the return of the security deposit he applied for a refund of the rent he paid for April of 2016. The Respondent stated that he did not understand the Applicant was seeking a rent refund.

The Application for Dispute Resolution declares that the Applicant is seeking a monetary Order of \$223.00, which is the amount of the security deposit. Had the Applicant also been seeking a rent refund, I would have expected he would be seeking a monetary Order for \$669.00, which is the amount of the security deposit plus one month's rent.

I was unable to fully understand the Details of Dispute section on the Application for Dispute Resolution, as the Applicant's hand writing is difficult to read. The Applicant was asked to read that section out loud during the hearing and he was unable to read some of the writing.

In the Details of Dispute section on the Application for Dispute Resolution, it appears that the Applicant declared that:

- the Respondent (landlord) violated section 28 since day one;
- the Respondent had planned to stay until the end of April;
- the Respondent mentally intimidated and physically assaulted the Applicant;
- the Respondent moved out because he felt unsafe; and
- the Respondent made a police report.

There does not appear to be anything in the Details of Dispute section on the Application for Dispute Resolution that indicates the Applicant was asking for a rent refund for April of 2016.

Rules 2.2 of the Residential Tenancy Branch Rules of Procedure declares that a claim is limited to what is stated in the Application. I find that the Applicant has not clearly informed the Respondent that he is seeking a rent refund during these proceedings nor would it be reasonable for the Respondent to understand that the Applicant was seeking a rent refund. I therefore refuse to consider a claim for a rent refund.

Issue(s) to be Decided:

Do I have jurisdiction in this matter and, if so, is the Applicant entitled to the return of his security deposit?

Background and Evidence:

The Applicant and the Respondent agree that:

- the Applicant moved into the rental unit on March 06, 2016;
- the Applicant rented a room in the two bedroom residence and he shared the kitchen, bathroom, and living room with the Respondent;
- the Applicant moved out of the rental unit on March 31, 2016;
- the Applicant agreed to pay monthly rent of \$446.00;
- the Applicant paid a security deposit of \$223.00;
- the Applicant provided the Landlord with a forwarding address, in writing, in March of 2016;
- the Applicant did not give the Respondent written authority to retain any portion of his security deposit;
- the Respondent did not return any portion of his security deposit; and
- the Respondent did not file an Application for Dispute Resolution claiming against the security deposit.

The Respondent stated that:

- he rents the rental unit from his landlord;
- he pays \$1,025.00 in rent to the landlord regardless of how many people live in the rental unit;
- his landlord is aware that he rents out the second bedroom in the rental unit;
- his landlord has no input into who he rents the second bedroom to;
- he is acting on his own behalf when he rents out the second bedroom; and
- the Applicant was an occupant and that the *Residential Tenancy Act (Act)* does not apply.

The Applicant stated that he has never met the Respondent's landlord and he pays his rent directly to the Respondent.

Analysis

Before considering the merits of the Application for Dispute Resolution I must determine whether this application has jurisdiction under the *Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

On the basis of the undisputed evidence I find that the Respondent is a tenant in the rental unit. No evidence has been submitted to establish that the Respondent has the authority to act on behalf of his landlord and to represent his landlord's interests.

The *Act* defines a landlord as follows:

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

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (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 agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (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;
- (d) a former landlord, when the context requires this;

As there is no evidence to show that the Respondent is the owner of the rental unit, the owner's agent, or another person who is acting on behalf of the owner, I find that the Respondent is not a landlord as defined by section 1(a) of the *Act*.

As there is no evidence to show that the Respondent is an heir, assign, personal

representative or successor in title to a person referred to in section 1(a) of the Act, I find that the Respondent is not a landlord as defined by section 1(b) of the Act.

The evidence shows that the Respondent is a tenant who is occupying the rental unit and I therefore find that he is not a landlord as defined by section 1(c) of the Act.

As there is no evidence to show that the Respondent is a former landlord of this rental property, I find that he is not a landlord as defined by section 1(d) of the Act.

The *Residential Tenancy Policy Guideline #13* reads, in part :

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

As the Respondent who is a tenant of the rental unit who has allowed the Applicant to live in the unit, I find that the Applicant is an occupant who has no rights or obligations under the tenancy agreement.

I find that the legislation has contemplated this type of circumstance and in the absence of evidence of a joint tenancy, the Act does not apply. Therefore, I find that neither the Applicant nor the Respondent is governed by this Act.

Conclusion

As the Act does not apply to these parties, I find that I do not have jurisdiction in this matter and I dismiss the Application for Dispute Resolution.

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: September 09, 2016

Residential Tenancy Branch