



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

This hearing dealt with an Application for Dispute Resolution by the Applicant for a monetary order for compensation for loss or other money owed, and for the return of the security deposit.

The applicant attended the hearing. As the respondent did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The applicant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on February 6, 2016.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the respondent has been duly served in accordance with the Act.

Preliminary issue

The first issue that I must decide is whether the Act has jurisdiction over this matter in order to proceed with the application.

The applicant stated that they rent a room from the respondent who was residing in the rental unit. The applicant stated that the respondent was a tenant who had a tenancy agreement with the owner of the property. The applicant indicated they were not added to the tenancy agreement as a tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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 respondent under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

In this case, the respondent is a tenant who has tenancy agreement with the owner of the rental premise, and that agreement gives them possession of the rental unit. Therefore, I find the respondent is not a landlord as defined by the Act. Rather, I find the respondent is a tenant who occupies the rental premises.

Section 13 of the Residential Tenancy Policy Guidelines states:

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.

[Reproduces as written]

In this case, the tenant allowed another person under an agreement to move into the rental premises that they were occupying. A new tenancy agreement with the owner of the rental premises to have the applicant added as co-tenant was never entered into. Therefore, I find the applicant is not tenant. Rather, I find the applicant is occupant as defined in the guideline and had no legal rights under the *Residential Tenancy Act*.

As this is a dispute between a tenant and an occupant and not a dispute between a landlord and tenant, I find that there is no jurisdiction for the applicant to proceed with their application and I dismiss the application without leave to reapply.

Conclusion

The applicant's application is dismissed for lack of jurisdiction.

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 20, 2016

Residential Tenancy Branch

