



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters – Jurisdiction

The parties agreed that the tenant (referred to as "applicant") rented a room from the landlord (referred to as "respondent.") The agreement commenced in October 2013 and ended on March 1, 2014.

The respondent testified that he rents the home from the property owner under a single tenancy agreement. The respondent then rents out rooms to roommates. Those roommates pay their rent into a bank account held by the respondent and his landlord then takes the rent payment from the account each month.

There was no dispute that the respondent did not live in the home for a period of time. His roommates, including the applicant, remained in the home and paid their rent into the respondents' bank account.

The respondents' landlord knows he rents rooms but has no relationship with the roommates and does not consider the rental unit anything but a single rental, for which the respondent is responsible.

The applicant said the respondent misled him by calling himself landlord and using the Residential Tenancy Act. The applicant pointed to a previous hearing held in which the respondent had applied to obtain an early end of tenancy. That decision (see cover for file number) was reviewed during the hearing. The application was withdrawn at the hearing as the tenant had vacated. No analysis of jurisdiction was issued in that decision.

I have considered the definition of landlord contained in the Act:

"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;*

The respondent is not the owner of the rental unit and does not act as agent for the owner. I find he is a tenant of the owner and that he rents out rooms. The respondent has no reversionary interest in the property; he is not an heir, has not been assigned and is not a personal representative or successor to title. The respondent did leave the home for a period of time but did not relinquish his status as the tenant. Rent was paid during this period of time, from the respondents' bank account. Therefore, I find that the respondent does not meet the definition of landlord and that he is a tenant.

As a result I find that the applicant was an occupant. Residential Tenancy Branch policy defines occupant as:

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.

Therefore, as the respondent is a tenant, I find that the applicant is an occupant and

has no rights or obligations under the Act.

Therefore, jurisdiction is declined.

Conclusion

Jurisdiction is declined

This decision is final and binding and 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 28, 2016

Residential Tenancy Branch