



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Applicant on February 16, 2016 for the return of her security deposit and furniture deposit.

The hearing was attended by several parties who were asked to identify themselves at the outset of the hearing. The Applicant appeared and was assisted during the hearing by her mother. The tenancy agreement submitted into evidence listed a corporate landlord and two tenants, one with the initials D.S. (as recorded on the front page of this Decision). The Application listed the landlord as the agent of the corporate landlord (herein after referred to as “Landlord’s agent”) as respondent to this dispute. The owner of the corporate Landlord and D.S. attended the hearing as respondents to this dispute. All the parties provided affirmed testimony.

The owner confirmed that the Landlord’s agent had received notice of this hearing as well as the Applicant’s documentary evidence; he also confirmed that the Landlord’s agent had not provided any evidence prior to this hearing. The hearing process was explained to the parties and they had no questions about the proceedings. The parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issues to be decided.

Issue(s) to be Decided

Has the Applicant named the correct party as the landlord in this dispute?

Background and Evidence

The owner testified that he entered into a tenancy with the Tenant D.S and her son on July 13, 2015 to rent a three bedroom home. The first page of the agreement states that it is between the corporate landlord and two tenants; one of which appeared for this

hearing. The tenancy between these parties is for a fixed length of two years due to expire on August 31, 2017. Rent for the rental home is \$2,700.00 on the first day of each month. The Tenant D.S confirmed the tenancy for herself and her son with the corporate landlord was still in effect and had not yet ended. The Tenant D.S. confirmed that she had paid the owner \$2,700.00 as a security deposit before the tenancy began. The owner confirmed that his tenancy was with the Tenant D.S. and her son.

The Tenant D.S explained that the rental home is a three bedroom house and that she rented the house for her son (the "Co-Tenant") who is also named on the tenancy agreement as a tenant; however the Tenant D.S. does not live in the rental home, only her son does. The Tenant D.S. explained that there were two bedrooms left and they requested from the owner that they be allowed to rent the other two rental rooms to other renters as occupants, to which the owner agreed.

The Tenant D.S. then advertised the rental unit and found two other renters, one of whom is the Applicant in this case. The Applicant then paid the Tenant D.S. a security deposit of \$450.00 and a furniture deposit of \$450.00 on July 29, 2015 for one of the rental rooms; the remaining room was rented to another occupant. The Tenant D.S. and the Applicant then agreed that the Applicant would be responsible to pay rent for the rental room of \$900.00 on the first day of each month.

However, instead of signing a separate tenancy agreement for the Applicant and the Tenant D.S., the Tenant D.S. added the Applicant to her tenancy agreement with the owner. The Applicant appears on the tenancy agreement as "Occupant #2" and signed the agreement on July 29, 2015. The Applicant's mother also signed the agreement acting as the Applicant's guarantor which states in part that the guarantor will:

"...comply with his or hers monthly financial obligations under the Lease and agrees to compensate the Landlord and/or the Tenants resulting from any failure to comply with the Tenant's lease agreement, financial and/or Strata Bylaw obligations for a occupancy period of one year".

[Reproduced as written]

The owner stated that he was not the Landlord of the Applicant but that he was the Landlord of the Tenant D.S. and the Co-Tenant as that was the only parties he dealt with at the time of signing the tenancy agreement. The Landlord confirmed that he had not even met the Applicant but was aware that the two occupants were being added as occupants on the tenancy agreement. The owner stated that he received rent monies separately from the Tenant D.S., the Applicant, and another occupant because the monies were coming from different sources so it made sense for the rent to go directly to the owner rather than come through the Tenant D.S. as one payment.

The owner testified that there was no intention for a tenancy to be established between the corporate landlord and the parties named as occupants on the tenancy agreement and this was the very reason why they were defined as occupants. The Tenant D.S. confirmed the owner's testimony and stated that she had accepted and retained the Applicant's security deposit and furniture deposit and that this was a separate agreement that she had with the occupant and was independent of the owner.

The Applicant did not dispute the above testimony given by the Tenant D.S. and the owner. The Applicant's mother confirmed that she had provided the Tenant's son with the security and furniture deposits and there was a requirement for the Applicant to pay \$900.00 each month for rent, although this amount was not documented on the tenancy agreement. The Applicant's mother testified that she made a verbal agreement with the Tenant D.S. that the Applicant (her daughter) would be there for three months on an experimental basis because there were to be male residents in the rental home.

The Applicant's mother confirmed that she did not make rent payments to the Tenant D.S. but sent them to another agent of the company Landlord, whom the owner identified was the "Controller" during the hearing. Therefore this person is herein referred to as the "Controller" in this Decision. The Applicant's mother testified that the Applicant did have communication with the Landlord's agent regarding some closet door repairs to the rental unit during the tenancy.

However, after three months, the tenancy was not working for the Applicant. As a result, the Applicant's mother called the Tenant D.S. and asked to end the tenancy or allow the Applicant to sublet it. The Applicant stated that the conversation did not yield any resolution. The Applicant testified that she attempted to find another occupant to take occupancy of the rental room but the Tenant D.S. started to hinder and interfere with this process. The Applicant testified that they provided the owner with the names of potential new occupants by email and the owner was going to start to interview them.

The Applicant's mother testified that on November 25, 2015, she provided the Landlord's agent with written notice to end the Applicant's tenancy for the end of December 2015. The Applicant's mother testified that she then provided the Landlord's agent her forwarding address on January 7, 2016 in a written letter. However, since this time they have not had the return of their security and furniture deposits from either the agent or the Tenant D.S. which they now seek to recover from the Landlord's agent. The Applicant was asked why they had named the agent as the landlord in this matter. The Applicant stated that they dealt with the Landlord's agent a lot during the ending of the tenancy. The owner stated that he had no obligation to return a security and

furniture deposit to the Applicant which had not been paid to him and his obligation was only to the Tenant and her son who were named as tenants on the tenancy agreement.

The Tenant D.S explained that as per the signed tenancy agreement, the Applicant was committed to a one year long tenancy and had no authority to leave earlier. The Tenant testified that when the Applicant vacated the rental room she caused damage and failed to clean the rental unit. In addition, the Tenant alleged that the Applicant owed her for rental loss for breaking the fixed term tenancy of one year.

The Tenant D.S. further argued that the Applicant was an occupant in this case and therefore the Applicant had no rights under the *Residential Tenancy Act* (the "Act"). The Applicant and Tenant both submitted that they had further evidence, which was not before me, which would prove the validity of a tenancy between them. The Tenant confirmed that she was still in possession of the Applicant's security and furniture deposit and had no intention of returning this to the Applicant because she had plenty of evidence for keeping it as well as making an additional monetary claim. The Tenant D.S testified that she had not received the Applicant's forwarding address.

Analysis

The issue that must be determined in this dispute is whether the Applicant has named the correct party as the landlord in this dispute. After considering all of the evidence provided by the parties in this case, I am satisfied that there exists no tenancy between the Applicant, the owner, or the Landlord's agent named on the Application.

I am satisfied that the Tenant D.S. in this case has a separate agreement with the owner of the rental unit as supported by the signed tenancy agreement that requires rent and security deposit amounts that differ to the arrangement the Applicant had with the Tenant D.S. I am satisfied that the intention of the parties was that the tenancy between the Tenant D.S. and the owner was to be distinct and separate to the one entered into by the Applicant and the Tenant D.S. I also find that there is insufficient evidence before me to suggest that the Tenant D.S. was acting as an agent of the owner. This is because when the Tenant and the Applicant entered into the arrangement, I find that at that time the owner had no involvement in that process which went beyond consent for the Tenant D.S. to have the Applicant reside in the rental home as an occupant.

Although the Applicant did pay rent monies directly to the owner and the Applicant had communication with the Landlord's agent with regards to some repairs to the rental unit, I find that this is not sufficient for me to conclude in this case that the Applicant was effectively rendered a tenant of the owner and/or the Landlord's agent. I find that

because the Applicant: (a) provided the Tenant with a security deposit independently of the security deposit given by the Tenant to the owner of the rental home; (b) was specifically named as an occupant on the Tenant's tenancy agreement with the owner; and, (c) communicated with the Tenant D.S. to try and end the tenancy, this is sufficient evidence that supports a finding that the Applicant is not a tenant of the Landlord's agent named on the Application.

Based on the foregoing, I am only able to conclude that the Applicant has named the incorrect Respondent in this dispute. Therefore, I dismiss the Application. However, the Applicant is at liberty to re-apply naming the correct party and ensuring that that correct party has been put on notice of the Applicant's forwarding address pursuant to the Act before applying to recover the deposits paid.

I did not make any legal findings on the Tenant D.S.'s and Applicant's submissions that a tenancy under the jurisdiction of the Act was entered into by these parties because the parties stated that they were both in possession of evidence to support such submissions which had not been provided for this hearing. Therefore, any claim made by the parties in this dispute must be supported by evidence relating to the issue of jurisdiction if this is an issue to be raised by the parties.

Conclusion

The Applicant has failed to establish a tenancy exists between the parties named on the Application. Therefore, the Application is dismissed. The Applicant may re-apply naming the landlord with whom she has a tenancy with. 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: October 04, 2016

Residential Tenancy Branch