



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNDC MNSD FF

Introduction:

Only the landlord attended and gave sworn testimony that she served the Application for Dispute Resolution by registered mail on the person, A.Y., named as the tenant. I find that A. Y. is served with the Application according to section 89 of the Act.

The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7 and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is A. Y. a tenant? If so, has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

A.Y. did not attend the hearing although served with the Application/Notice of Hearing. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The landlord stated the tenancy commenced with a tenant, S.C. on December 21, 2005. She had a professional agent to handle the tenancy but he died and she took over the management with S.C. still as a tenant. In evidence is a subsequent tenancy agreement with S.C. commencing March 1, 2010 on a month to month tenancy. The unit was new in 2005 according to legal documents.

In 2013, the landlord stated the tenant S.C. invited her to talk with her and a friend, A.Y. S.C. informed the landlord she had to return home to another country for a few months as her mother was ill. S.C. said that A.Y. would look after the unit and she had worked with the former agent's business. A.Y. confirmed this and said there was no need to fill out a new tenancy agreement or condition inspection report as S.C. would be back in a few months. The landlord trusted them.

S.C. has never returned to the unit and A.Y. has collected rent from people to whom she rents the unit and forwarded money to the landlord and also says she is sending money to S.C. in the other country. She won't reveal S.C.'s address. The landlord entered the property and found a significant amount of damage, for example, A.Y. disconnected the garburator and dishwasher hoses and has allowed the water to flood cupboards and floors with consequent destruction. She appears to rent the unit to students. A.Y. will not turn over all the keys and fobs. A.Y. had told her to keep the security deposit of \$612.50 and has given her a cheque for \$500 to cover an \$80 rent increase plus some damages. However, after deducting these amounts, the landlord is claiming \$3165.48 in damages.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

As discussed with the landlord in the hearing, I find her application names A.Y. as the tenant. I find she is not a tenant. I find A.Y. has never occupied the unit or signed a tenancy agreement or even implied she is a tenant for she openly rents to others and remits some money to the landlord and some to S.C., the tenant who has the tenancy in her name. Based on the fact that S.C. told A.Y. to manage the unit while she was in another country and A.Y. is sending her some proceeds of the rental, it appears that she may be an agent of the tenant, S.C. Therefore, I dismiss this application of the landlord as I have no jurisdiction under the Act to hear an application against a third party who may or may not be agent for the tenant who was not named as a party to the application.

The landlord noted the difficulty of service on S.C. as she is in a distant country and A.Y. won't reveal her address. I suggest she consult section 71 of the Act and apply for substituted service of an application on the tenant through electronic means and/or through her agent who appears to be in contact with her. In this way, she may bring an application naming the tenant as a party to the dispute.

Conclusion:

I dismiss this application of the landlord and give her leave to reapply naming the correct tenant as a party to the dispute. I find her not entitled to recover filing fees due to her lack of success.

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: January 26, 2017

Residential Tenancy Branch