



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization for the applicant to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary order for compensation for loss or other money owed under the Act, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the respondent to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

While the applicant attended the hearing by way of conference call, the respondent did not. The applicant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The applicant testified that the respondent was served with the application for dispute resolution hearing package ('Application') and evidence on December 13, 2016 by way of registered mail. The applicant provided a Canada Post tracking number in their evidence package. In accordance with sections 88, 89, and 90 of the Act, I find that the respondent was deemed served with copies of the Application and applicant's evidence on December 18, 2016, five days after its registered mailing.

Issue(s) to be Decided

Does the Applicant's occupation of the dispute property fall within the jurisdiction of the Residential Tenancy Act?

If so, is the applicant entitled to authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67, and an order requiring the respondent to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 of the *Act*?

Background and Evidence

The applicant provided undisputed testimony regarding the following facts. In September of 2016 the applicant went to view a house for rent. When the applicant attended the viewing, the applicant found out that the respondent was renting the entire house from the owner, and was subletting the rooms for \$550.00 per month. The respondent occupied one of the five bedrooms in the house, with a total of three bedrooms upstairs, and two downstairs. The male occupants had access to the bathroom downstairs, while the female occupants had access to the bathroom upstairs. Each room was rented out to different occupants, with the respondent occupying a room herself, and her daughter in another room. The kitchen and living area was shared by the respondent, her daughter, and all the occupants.

On September 6, 2016, the applicant paid the respondent \$550.00 in rent and an additional \$250.00 security deposit to secure the room for the tenancy which was to begin in September although the respondent stated that the room upstairs that the applicant wanted was “not ready”, and required renovations. No tenancy agreement was signed, although a handwritten, signed receipt was provided by the respondent stating “I, TL, received \$800.00 from MA Sep. 2016 of rent and deposit, September 6th, 2016”. The applicant testified that he had permission to live temporarily in a room downstairs for one to two weeks until the room upstairs was ready. When he went to the room downstairs he was startled to find a female already occupying the room, and in bed. The female occupant informed the applicant that this room was rented on September 6, 2016 by her son. The applicant then tried to call the respondent three to four times, but was unsuccessful. He found the respondent upstairs in the room that he had intended to occupy, and she informed him that the room was not ready as it required patching. The female occupant downstairs informed the applicant that she was promised the same room upstairs, and was told the same thing—to take the room downstairs, that she was now occupying.

On September 16, 2016 the room upstairs was still not ready, and as the applicant was unable to move in, found another place. The applicant requested from the respondent his \$800.00 as he was never provided a room for rent. The applicant submitted, in his evidence, a letter to the respondent dated October 17, 2016 requesting a refund of his money, and in the letter he provided his forwarding address. The applicant testified that he did not receive his money, or a reply from the respondent.

Analysis

Residential Tenancy Policy Guideline 19 clarifies the definition of “landlord” in the scenario when the tenant has allowed another occupant to live with them in the rental unit.

Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

The applicant gave evidence that he had rented a room from the respondent, who was renting the entire home from the owner. The respondent remained in the rental home, while renting out rooms to other occupants. Based on the evidence before me, and the policy guideline above, I find that the applicant in this dispute would be considered an occupant/roommate, and not a tenant under the *Act*. Residential Tenancy Branch Policy Guideline #19 establishes that an occupant under this definition has no rights or responsibilities under the *Act*. Accordingly I cannot consider the application as I have no jurisdiction in this matter.

Conclusion

I find that I do not have jurisdiction in this matter and I dismiss this 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: March 13, 2017

Residential Tenancy Branch