



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* ("the Act") for the return of a security deposit pursuant to section 38. The respondent/home owner did not attend this hearing, although I waited until 1:11 p.m. in order to enable the respondent/home owner to connect with this teleconference hearing scheduled for 1:00 p.m. The applicant attended the hearing and was given a full opportunity to be heard.

The applicant gave sworn testimony that he served the respondent/home owner with his Application for Dispute Resolution hearing package ("ADR") on September 19, 2016 by registered mail. The applicant provided the Canada Post registered mail tracking number and testified that the respondent/home owner had received the ADR package. In accordance with section 89 and 90 of the Act, I find the respondent/home owner deemed served with the applicant's ADR on September 24, 2016.

Preliminary Issue: Jurisdiction under the Act to consider this application

Background and Evidence

The applicant's accommodation arrangement began on July 1, 2015 requiring him to pay \$475.00 on the 31st of each month. The applicant testified that he paid a \$250.00 deposit to the home owner at the outset of this arrangement and that the home owner has not returned his deposit now that he no longer resides on the residential property.

The applicant testified that the home owner lives in the upstairs of a large house while the applicant and other occupants reside downstairs in the house. The applicant testified that there is one bathroom upstairs and one downstairs but that when either bathroom is not in working order or occupied, the use of the other available bathroom is shared by all occupants. The applicant testified that the landlord and all the occupants, including him, share one kitchen and eating area.

The applicant submitted a copy of the agreement dated July 1, 2015. The document was titled a "room rental agreement". In that document, signed by both parties, the applicant committed to rent a room and agreed to a variety of "household principles" including but not limited to: no overnight or unauthorized guests; restricted laundry hours; no drinking or drug use; quiet hours; housekeeping responsibilities; and a conflict resolution process with other occupants. The

agreement also refers to a “security deposit” to be reconciled between the parties at the end of the tenancy.

Analysis

Section 4(c) of the *Act* reads in part as follows:

- 4 *This Act does not apply to...*
 (c) *living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation...*

The sworn, undisputed testimony and the documentary evidence of the applicant is that he rented a room where he shares the bathroom and kitchen facilities with the other occupants of the house, including the owner of the home.

I find that the undisputed evidence shows that rental room has been provided to the applicant as living accommodation that occasionally shares bathroom facilities with the owner and other occupants in the building. Kitchen facilities are shared with the owner regularly. The oral testimony of the applicant, the written evidence in their room rental agreement, and the landlord’s rules of residence all provide evidence to prove that this applicant rents a shared living accommodation with the owner of the home as well as other occupants.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this agreement. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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 21, 2017

Residential Tenancy Branch