



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (“the Act”) for: authorization to obtain a return of his security deposit pursuant to section 38; authorization to recover the filing fee for this application pursuant to section 72.

Preliminary Matter: Jurisdiction

At the outset of the hearing, I raised the issue of whether the Residential Tenancy Branch has jurisdiction to hear this matter. As evidence for this hearing, the applicant provided copies of text messages between the parties. The text correspondence referred to the parties taking and breaking each other’s personal belongings. There is also reference to a third party’s payment of rent.

The applicant at this hearing testified that, from the outset of this tenancy, the respondent and the applicant both resided in the rental unit at the dispute address property. The applicant testified that he provided his portion of the full rent for the rental property to the respondent each month and that the respondent provided that rent money, along with his own portion, to the landlord. The applicant testified that he provided a portion of a security deposit to the respondent and that his application is intended to have the respondent return that security deposit in double the amount because he has failed to do so within the timeline required by the Act.

In considering the evidence and submissions of the applicant, I note the following,

- *The applicant and respondent resided in the same rental unit;*
- *The respondent rents the rental unit from a third party;*
- *The respondent does not represent the owner of the rental unit or any other “landlord”;*
- *Two to three residents resided in the rental unit at any given time;*

- *The respondent accepts “rent” from the applicant and provides it to a third party;*
- *There is a written agreement between the applicant and respondent titled, “residential tenancy agreement”.*

For a matter to be considered under the *Residential Tenancy Act*, both parties to the application must have a role that fits within the scope of the *Act*. To consider a matter under the *Act*, a tenancy must be formed with both a tenant and a landlord. Under the *Residential Tenancy Act* definitions section (section 1), a landlord is defined;

"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 owner, ...
- (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 respondent, when the context requires this;

[emphasis added]

Based on the evidence provided at this hearing by the applicant, the respondent in this matter does not own the rental unit or act on the behalf of the owner and has no formal relationship with the owner. Contrary to the wording of section 1(c), the respondent in this matter is a tenant occupying the rental unit and therefore the respondent is excluded from being considered a landlord under subsection 1(c) or any of the other categories that define a landlord under the *Act*.

The applicant testified that he and the respondent shared kitchen and bathroom facilities. The applicant testified that the respondent gathered money from the applicant each month and provided it to the “landlord”. The applicant did not submit a copy of a signed residential tenancy agreement. The taking of a portion of the rent and a “security deposit” from another resident does not on its own constitute a residential tenancy.

Residential Tenancy Policy Guideline No.19 addresses alternative agreements, including assigning and subletting.

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the “landlord” of the sub-tenant. [emphasis added]

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. As with all tenancy matters, this agreement should address the use of the unit itself as well as common areas, services and facilities. While there may have been some informal and changeable understanding between the applicant and respondent, the testimony of the applicant is evidence sufficient to show that the applicant and the tenant were roommates, perhaps co-tenants.

Based on the applicant’s description of the rental arrangement with the respondent, I find that this arrangement was neither a tenancy nor a sublet and therefore the living arrangement is not governed by the *Residential Tenancy Act*. As a result, I find that I do not have jurisdiction in this matter.

Conclusion

I decline to hear the matter as I do not have jurisdiction.

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: July 5, 2017

Residential Tenancy Branch