



Dispute Resolution Services

Page: 1

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 the return of a security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties (the applicant and one respondent) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Documentary evidence was submitted by the applicant and, after review of the contents of that evidence, the following preliminary matter was discussed.

Preliminary Matter: Jurisdiction under the Act to consider this application

The applicant’s accommodation arrangement began on September 1, 2016 requiring him to pay \$850.00 on the 1st of each month. The applicant testified that he paid a \$425.00 deposit to the home owners at the outset of this arrangement and that he requests an order that the home owner return his entire deposit now that he no longer resides on the residential property.

The applicant testified that he resided in the upstairs of the home owned by the respondents. He testified that, while there was one bathroom upstairs that he shared with the other occupant/student in the residence, the applicant had access to all of the bathrooms in the home. He testified that the home owner’s bedroom was also in the upstairs of the home. The applicant also testified that the home owners and all the occupants/students, including him, shared one kitchen and eating area. He testified that, on occasion, he ate dinner with the home owners.

The applicant submitted a copy of a residential tenancy agreement with the details of this living agreement including the monthly amount paid and the deposit taken. The applicant also submitted the rules provided by the respondents at the outset of this living arrangement including but not limited to: notice required for guests; regular cleaning of bedroom required and some cleaning services (vacuuming) provided; limits to shower times and food amounts; quiet hours; hugs by the home owners; and

requested phone calls if you are late. 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 undisputed testimony and the documentary evidence of the applicant is that he resided in a homestay where he shares the bathroom and kitchen facilities as well as food with the other occupants of the house, including the owners of the home.

I find that the evidence shows that the living accommodation agreed upon in this application is a situation where bathroom facilities, kitchen facilities, food and other household facilities are shared with the owners and other occupants in the building. The testimony of both the applicant and respondent at this hearing, the written evidence in the signed agreement (despite being titled “residential tenancy agreement”), and the owners’ rules of residence all provide evidence to prove that this applicant resided in a shared living accommodation (a homestay) 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 homestay 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: August 03, 2017

Residential Tenancy Branch