



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNSD, MNDC, OLC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Applicant applied to set aside a Notice to End Tenancy for Cause, for the return of his security deposit, and for a monetary Order for money owed or compensation for damage or loss.

The Applicant stated that on April 24, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondent, via registered mail. The Respondent acknowledged receipt of these documents.

On May 25, 2017 the Applicant submitted 26 pages of evidence to the Residential Tenancy Branch. The Applicant stated that this evidence was served to the Respondent, via registered mail, on May 16, 2017. The Respondent acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On August 02, 2017 the Respondent submitted 15 pages of evidence to the Residential Tenancy Branch. The Respondent stated that this evidence was mailed to the Applicant at the service address provided in the Application for Dispute Resolution, via registered mail, on August 02, 2017.

The Applicant stated that on July 30, 2017 she submitted a different 15 pages of evidence to the Residential Tenancy Branch. The Respondent stated that this evidence was mailed to the Applicant at the service address provided in the Application for Dispute Resolution, via registered mail, on July 30, 2017. The Respondent stated that she does not have copies of Canada Post receipts for the documents she allegedly mailed on these dates.

The Applicant stated that he still receives mail at that service address but he did not receive the evidence that was allegedly mailed on July 30, 2017 and August 02, 2017.

As the Applicant did not acknowledge receiving the Respondent's evidence and the Respondent did not have any evidence to corroborate her testimony that it was mailed, the parties were advised that the Respondent's evidence would not be considered at these proceedings.

The Respondent was advised that during the hearing she would be permitted to discuss any relevant document she had submitted and if she was able to establish that a document was highly relevant I would consider adjourning the hearing for the purposes of allowing her to re-serve that document. The hearing was concluded without the Respondent requesting an adjournment for the purposes of re-serving evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Do I have jurisdiction over this living arrangement and, if so:
Is the Applicant entitled to the return of his security deposit;
Is the Applicant entitled to a rent refund;
Is the Applicant entitled to compensation for a breach of his right to quiet enjoyment; and
Should a Notice to End Tenancy be set aside?

Background and Evidence

The Applicant and the Respondent agree that:

- the Applicant moved into the rental unit in March of 2017;
- the Applicant agreed to pay the Respondent monthly rent of \$560.00;
- the Applicant moved out of the rental unit on April 21, 2017;
- the Applicant had a private bedroom in the residential complex;
- the Respondent had a private bedroom in the residential complex; and
- the Applicant and the Respondent shared the kitchen and other common areas.

The Respondent stated that she advertised a room for rent on a popular website and the Applicant answered that advertisement. She stated that she rents the main portion of this residential complex from her landlord and that she rents out rooms in her rental unit to supplement her rent. She stated that she rents out the rooms to supplement the rent she pays to her landlord and that she has to pay the same rent to her landlord regardless of the number of people living in her unit. She stated that she is not acting on behalf of her landlord when she rents out rooms to other occupants.

The Applicant agrees that this room was advertised on a popular website. He stated that it was

not advertised as a "sublet" and he did not know the Respondent was a tenant in the living unit until after the tenancy began.

The Respondent contends that I do not have jurisdiction over this living arrangement because the Respondent does not have a rental agreement with her landlord and he is simply living in the rental unit as an occupant.

The Applicant contends that I do have jurisdiction over this living arrangement because he signed a rental agreement, a copy of which was submitted in evidence.

Analysis

Before considering the merits of the Applicant's Application for Dispute Resolution, I must determine whether this application has jurisdiction under the *Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

The *Act* defines a landlord as follows:

"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 landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (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 landlord, when the context requires this;

As there is no evidence to show that the Respondent is the owner of the rental unit, the owner's agent, or another person who is acting on behalf of the owner, I find that the Respondent is not a landlord as defined by section 1(a) of the *Act*.

As there is no evidence to show that the Respondent is an heir, assign, personal representative or successor in title to a person referred to in section 1(a) of the *Act*, I find that the Respondent is not a landlord as defined by section 1(b) of the *Act*.

As the evidence shows that the Respondent is a tenant who is occupying the rental unit, I find that she is not a landlord as defined by section 1(c) of the *Act*.

As there is no evidence to show that the Respondent is a former landlord of this rental property, I find that she is not a landlord as defined by section 1(d) of the *Act*.

In these circumstances the Applicant must be considered an occupant as defined in the Residential Tenancy Policy Guideline Manual, which stipulates that when a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I find that the legislation has contemplated this type of circumstance and in the absence of evidence of a joint tenancy, the *Act* does not apply. Therefore, I find that neither the Applicant nor the Respondent is governed by this *Act*.

Conclusion

As the *Act* does not apply to these parties, I find that I do not have jurisdiction in this matter and I dismiss the 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: October 27, 2017

Residential Tenancy Branch