



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This proceeding was scheduled to deal with cross applications. Before me was a Landlord's Application for Dispute Resolution for authorization to retain a security deposit and pet damage deposit, and other remedies. Also before me was a Tenant's Application for Dispute Resolution seeking various remedies including return of a security deposit and pet damage deposit and compensation for other damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

It should be noted that although I had a Landlord's Application for Dispute Resolution before me, the landlord/applicant indicated in her details of dispute that she is not a landlord and that the relationship between the parties was not one of landlord/tenant but one of roommates. In the details of dispute of the Tenant's Application is reference to a previous hearing (file number referenced on the cover page of this decision). In the decision issued for the previous hearing, the issue of jurisdiction is raised. The Arbitrator found it unnecessary to determine jurisdiction with respect to the parties appearing before me. I have dealt with the issue of jurisdiction further below in this decision and I refer to the parties by their initials, as follows: NF filed the Landlord's Application for Dispute Resolution and MJ filed the Tenant's Application for Dispute Resolution.

Preliminary and procedural matters

1. Naming of parties

MJ had named two respondents on his application; however, only one respondent (FN) appeared. MJ stated that he wished to withdraw his claims against the second respondent. I amended the MJ's application accordingly and I have excluded the second respondent as a named party.

2. Remedies sought

Both parties indicated they were seeking various remedies against the other, including monetary claims. However, both parties confirmed that the living arrangement has ended and that the only outstanding issues pertain to monetary claims against each other. Accordingly, I amended the applications to strike all remedies except those pertaining to monetary claims.

3. Service of hearing documents and evidence

The Landlord's Application for Dispute Resolution was filed on June 30, 2017 and the hearing package was generated on July 4, 2017. NF was uncertain as to how she served the hearing package upon MJ. MJ initially testified that he did not receive the Landlord's Application for Dispute Resolution; however, he later changed his testimony to confirm he had received it by way of registered mail dated July 7, 2017. Accordingly, I was satisfied that MJ was in receipt of the Landlord's Application for Dispute Resolution.

NF testified that she sent an evidence package to MJ on December 8, 2017 via regular mail. MJ confirmed that he had received it but only one day before the hearing date.

The Tenant's Application for Dispute Resolution was filed on July 5, 2017 and a hearing package was generated the same day. MJ stated that he had difficulty in serving his Application for Dispute Resolution upon NF as the only address he had for her was the rental unit address and NF was no longer living at that address. MJ stated that he went to the rental unit address a couple of times in an attempt to serve NF. On July 30, 2017 he gave his hearing package to the current owner/occupant of the rental property and this person told MJ she would give it to NF.

MJ applied for a Substituted Service Order seeking authorization to serve NF by email. On August 1, 2017 an Arbitrator granted MJ's request and authorized service to NF by email. MJ stated that he sent an email containing his hearing package to NF on August 4, 2017.

MJ stated that he sent evidence to NF on November 19, 2017 by registered mail using the address for FN's lawyer. I heard that FN had a lawyer assisting her with respect to the previous dispute.

MJ stated that he send additional evidence to NF by way of email the same day as this hearing.

NF stated she did not receive the hearing package left with the current owner of the rental property. NF stated that she did not receive the email MJ sent on August 4, 2017. During the hearing FN stated she was checking her "spam folder" and she found the email MJ sent that morning. NF suggested that perhaps the August 4, 2017 email went into her spam folder as well. NF stated that her spam folder only went back as far as November 2017.

MJ expressed frustration in not having an address at which to serve NF and requested that NF provided him with one. NF stated that she is able to be served by mail sent to her at the rental unit address since she has a one-year mail forwarding service in place with Canada Post. I noted that the service address NF provided on her Application for Dispute Resolution is the rental unit address.

Although NF stated she did not have MJ's Application for Dispute Resolution NF stated that she had a good idea as to the nature of his claims. Considering NF had submitted that the living arrangement the parties had does not fall under the *Residential Tenancy Act*, and the Arbitrator for the previous dispute also cautioned the parties that the Act may or may not apply I asked both parties if they were prepared to make submissions with respect to jurisdiction. Both parties confirmed that they were prepared to make submissions on that issue. Therefore, I proceeded to hear arguments with respect to the issue of jurisdiction before determining the appropriate course of action for dealing with hearing documents and evidence that may not have been received by the other, at all or on time.

4. Jurisdiction

The parties provided consistent submissions that NF was living in the rental unit under a tenancy agreement she had with the owner of the property (referred to by initials TG). The rental property was described as a three bedroom, two bathroom upper unit in a house (herein referred to as the rental unit) and the lower level of the house had a separate basement suite that was occupied by other tenants, and a laundry and storage area. Two of the bedrooms in the rental unit were occupied by NF and an agreement was reached in May 2016 for MJ to rent the third bedroom with shared use of the living room and kitchen on a month to month basis. The rent was set at \$840.00 inclusive of utilities and a security deposit of \$420.00 was paid to NF along with a pet deposit of \$450.00. the parties signed a document where by the arrangement is described as being "subletting a room".

At the end of May 2017 the owner of the property sold the house to a new owner and the new owner currently occupies the rental unit. MJ vacated the rental unit on or about June 15, 2017.

The parties participated in a previous dispute proceeding on June 9, 2017. That proceeding was to deal with an application filed by MJ against NF and the former owner of the property TG. The former owner participated in the hearing of June 9, 2017. The Arbitrator who heard that application found as follows:

After carefully considering all of the evidence I determined that the applicant does not have a tenancy relationship with TG. The tenancy is between TG and NF. I do not accept the submission of the applicant that NG [should read NF] was acting as an agent for TG. The documentary evidence indicates there is no contractual relationship between the applicant and TG. As a result I dismissed the application against TG.

There may or may not be a tenancy relationship between the applicant and NF.

As a result I dismissed the applicant's claim against NF with liberty to re-apply. If the applicant and NF are not able to settle the issue of the return of the security deposit and pet damage deposit, the applicant retains the right to file a claim with the Residential Tenancy Branch and issue of whether this is a residential tenancy relationship would be determined by the arbitrator who hears the case

[My correction inserted above]

During the hearing before me, NF maintained that she was a tenant of the property and that she had a written tenancy agreement with the owner of the property, TG. NF testified that she did not act as TG's agent. NF confirmed that she did not collect rent from the basement suite or make repairs to the property and was not asked or required to be the owner's agent. Rather, all NF did was ask TG's permission to rent out one of the bedrooms approximately one year into

her tenancy and TG gave her permission to do so. NF is of the position that she and MJ were roommates.

MJ acknowledged that he has seen the tenancy agreement FN had with TG as it had been provided to him as evidence for the previous dispute resolution proceeding. MJ submitted that the addendum indicates FN had an agency relationship with the owner. I noted that I did not have a copy of the tenancy agreement or addendum in the file before me. FN stated she had the agreement, including the addendum, in front of her. I asked her to read from the addendum, which she did. I noted that I did not hear any terms that would point to an agency relationship.

MJ then stated that the authorization to act as the owner's agent was in a different document that MJ did not have in front of him. I asked MJ to describe the content to the best of his recollection. He indicated that in the document he was referring to the owner gave FN authorization to rent out a room.

MJ is of the position he sub-let the room from FN and that they have a landlord/tenant relationship to which the Act applies.

I noted that in the late evidence submitted by the tenant, were emails, including one he sent to FN in April 2017 where he also took the position that the parties had a roommate relationship.

Section 2 of the *Residential Tenancy Act* provides for application of the Act to tenancy agreements, rental units and residential property. A tenancy agreement is defined as being one between a landlord and a tenant. In order to find jurisdiction in this case, I must be satisfied that FN is a "landlord". Section 1 of the Act provides a definition of "landlord", which I reproduce below:

"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;

[My emphasis bolded]

Section 2 of the Act and the definition of “landlord” has not changed recently; however, the Residential Tenancy Branch has updated Policy Guideline 19: *Assignment and Sublet* more recently and it provides greater clarity with respect to the issue that is before me. I noted that the tenant had referred to the former policy guideline 19 in his communications with FN and I am of the view that the updated policy guideline provides greater certainty in these matters. Accordingly, I reproduce portions of the updated guideline below:

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 use of the word ‘sublet’ can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. ‘Sublet’ has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

While terms restricting the number of occupants or requiring prior consent of the landlord for additional occupants are not standard terms of a tenancy agreement under the Act, the parties may include such clauses and may also set out in their written tenancy agreement that the amount of rent increases for additional occupants in accordance with s. 13 (2)(iv) and s. 40 of the Act.

Occupants should be aware that the director’s authority is limited to the relationship between the original tenant and their landlord.

[My emphasis underlined]

Since FN remained an occupant of the rental unit, in order to find FN to be a landlord and take jurisdiction to resolve these disputes, I must be satisfied that FN was acting as the owner's agent in order to find FN meets the definition of landlord. The Arbitrator presiding over the previous hearing did not accept that FN was the owner's agent and that Arbitrator had the benefit of TG's appearance at that hearing. I also find that MJ failed to satisfy me that FN was acting as the owner's agent. Therefore, I find that FN and MJ did not have a landlord/tenant relationship that falls under the *Residential Tenancy Act* and I decline to proceed any further with these applications.

Conclusion

The *Residential Tenancy Act* does not apply to the agreement between the parties and I have declined jurisdiction to resolve their disputes.

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: December 22, 2017

Residential Tenancy Branch