



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

This hearing was convened as a result of an Application for Dispute Resolution, received at the Residential Tenancy Branch on June 15, 2017 (the “Application”). The Applicant applied for an order that the Respondent return all or part of the security deposit or pet damage deposit, pursuant to the *Residential Tenancy Act* (the “Act”).

The Applicant attended the hearing on her own behalf and provided affirmed testimony. The Respondent did not attend the hearing.

According to the Applicant, the Application package was served on the Respondent by registered mail on June 15, 2017. However, according to the Applicant, the Respondent declined to accept the package. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Application package is deemed to have been received by the Respondent on June 20, 2017.

The Applicant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Jurisdiction

The Applicant testified that the Respondent rented the rental unit from the owner. In turn, the Applicant rented a room in the rental unit from the Respondent. The Applicant described herself as the Respondent's "flat mate". The Applicant further testified that she paid rent in the amount of \$600.00 per month, and that she paid a security deposit of \$225.00, which the Respondent holds.

Section 1 of 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.*

[Reproduced as written.]

Further, Policy Guideline #13 states that where 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 the Respondent in this matter did not meet the definition of a landlord. There was insufficient evidence before me to conclude she acted as agent of the owner, or that she had the authority to exercise all of the powers or perform the duties of a landlord under the *Act*. In addition, the Respondent did not meet the definition of a landlord because she was a tenant of the owner and occupied the rental unit. Therefore, the Applicant is not a tenant of the Respondent; rather, she is an occupant or a roommate.

Based on the above facts, I find I do not have jurisdiction to hear this Application.

Conclusion

The Application is dismissed for lack of 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: December 4, 2017

Residential Tenancy Branch