



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order that the security deposit for this tenancy be returned pursuant to section 38; and
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

The respondent did not attend this hearing which lasted approximately 20 minutes. The applicant attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The applicant testified that she served the respondent with the application for dispute resolution and evidence on August 15, 2017 by registered mail. The applicant submitted into written evidence a copy of the registered mail slip and tracking number as evidence of service. I find that the respondent was deemed served with the application for dispute resolution and evidence in accordance with sections 88, 89 and 90 of the *Act* on August 20, 2017, five days after mailing.

Issue(s) to be Decided

Is the applicant entitled to a return of all or a portion of her security deposit from the respondent?

Should the respondent be ordered to comply with the Act, regulations or agreement?

Background and Evidence

The applicant provided the following undisputed facts. The applicant first moved into the rental unit in December, 2016 and paid the respondent a “security deposit” of \$250.00. The rental unit is a bedroom in a detached home. The applicant shared the bathroom and kitchen facilities with the respondent. There is no written agreement between the parties. The applicant said that she believes that the owners of the property were aware that the respondent was allowing additional occupants in the building.

The applicant said that in addition to herself, there were other occupants of the building who all shared the common facilities and each paid for the use of a bedroom.

The applicant said she moved out of the building in June, 2017 and requested the return of the deposit from the respondent.

Analysis

Landlord is defined in section 1 of the *Act* as:

- (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...

- (c) a person, other than a tenant occupying the rental unit...

Residential Tenancy Policy Guideline 19 provides that a sublet is where the original tenancy agreement remains in place and the tenant and the sub-tenant enter into a new sub-lease agreement. The tenant effectively becomes the “landlord” of a new sub-lease tenancy agreement.

Guideline 19 provides that, “unless the tenant is acting as an 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*.”

In the case at hand, based on the undisputed evidence provided, the respondent was not acting as agent of the property owners. The respondent was residing in the rental building at all material times. Accordingly, I find that the applicant is considered an occupant/roommate and the *Act* does not apply to the relationship.

Under these circumstances and based on the evidence before me, I find that the *Act* would not apply to this living arrangement. 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: February 8, 2018

Residential Tenancy Branch