



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to the Applicant's Application for Dispute Resolution, in which the Applicant has applied for the return of his security deposit.

The Applicant stated that the Application for Dispute Resolution and Notice of Hearing were served to the Respondent by registered mail, although he cannot recall the date of service. The Respondent stated that he believes he received these documents in the mail sometime in August of 2017.

On October 12, 2017 the Respondent submitted 15 pages of evidence to the Residential Tenancy Branch. The Respondent stated that this evidence was served to the Applicant, via express post mail, although he cannot recall the date of service. The Applicant stated that he did not receive this evidence.

The Respondent was given the opportunity to adjourn this hearing to provide him with the opportunity to re-serve his evidence or to proceed with the hearing with the understanding he could request an adjournment at any point if he felt it was necessary for me to view his evidence. This hearing was concluded without the request for an adjournment.

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 in this matter and, if so, is the Applicant entitled to the return of his security deposit?

Background and Evidence

The Respondent stated that he is a tenant of the rental unit and that he has resided in the rental unit since September 01, 2016.

The Respondent stated that he has a tenancy agreement with the Landlord of the rental unit that requires him to pay rent of \$4,000.00 per month. The Applicant does not dispute this testimony.

The Respondent stated that he pays \$4,000.00 in rent to the Landlord regardless of how many people are living in the rental unit. The Applicant does not dispute this testimony.

The Respondent stated that he lives in the rental unit and that he rents out rooms in the rental unit to other occupants, who share the kitchen, living room, and other common areas with him. He stated that he does not act on behalf of his landlord when he rents out rooms to other occupants.

The Applicant and the Respondent agree that the Applicant moved into the rental unit in January of 2017 and that he moved out in April of 2017.

The Applicant and the Respondent agree that the Applicant agreed to pay monthly rent of \$650.00 plus utilities and that he paid a security deposit of \$300.00. The parties agree that the Respondent attempted to return \$190.00 of the deposit by electronic transfer in May of 2017, but the Applicant declined the transaction.

The Respondent contends that the parties were roommates; that he is a tenant in the rental unit; that he is not a landlord, and that the *Residential Tenancy Act (Act)* does not apply.

The Applicant contends that he understood the Respondent was his landlord, that he was acting as a landlord, and that the *Act* should apply.

Analysis

Before considering the merits of the 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*.

On the basis of the undisputed evidence I find that the Respondent has a tenancy agreement with the Landlord of the rental unit and is a tenant in the same property. On the basis of the testimony of the Respondent and in the absence of evidence to the contrary, I find that the Respondent does not have the authority to act on behalf of his landlord or to represent his landlord's interests.

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 he 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 he 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.

The Applicant retains the right to attempt to recover his security deposit in a court of proper authority.

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 06, 2018

Residential Tenancy Branch