



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction

This hearing convened as a result of an Application for Dispute Resolution wherein the Applicant sought return of the deposit paid and other unspecified relief.

Both the Applicant and the respondent, C.C. called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Jurisdiction

At the outset of the hearing, the Respondent, C.C., confirmed she was the owner of the rental unit, yet stated that she did not have a tenancy agreement with the Applicant, A.B., as A.B. was merely a roommate of the Tenant, C.C. (who was named as Landlord/Respondent on the Application for Dispute Resolution).

Issues to be Decided

1. Does the *Act* apply to A.B.'s living situation?
2. If so, should A.B. be granted an Order for return of double the security deposit paid pursuant to section 38 of the *Residential Tenancy Act*?

Background and Evidence

The Applicant testified that she moved into the rental unit on April 2, 2017. She paid \$550.00 per month in rent as well as \$275.00 to N.E.

The Applicant confirmed that N.E. is a tenant of the property owner, C.C. Both N.E. and C.C. were named as Landlords on the Application for Dispute Resolution.

A.B. testified that she received receipts from N.E. who signed on her own behalf and purportedly as agent for C.C.

C.C. testified that she does not know A.B. and had never met her. She further testified that A.B. was roommates with the Tenant N.E., who regularly took in roommates as she was not able to afford the rent on her own. C.C. confirmed that she as a tenancy agreement with N.E., and no agreement with A.B.

Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find that the Applicant is a roommate of the Tenant, N.E., and therefore does not have any rights and responsibilities under the *Residential Tenancy Act*.

I accept C.C.'s testimony that she did not enter into a tenancy agreement with A.B. and that she has not even met A.B. I further find that N.E. has not been acting on C.C.'s instructions or authority and therefore has not been acting on behalf of the Landlord.

I find that the Tenant, C.C., has not assigned her tenancy to A.B., nor has she sublet to A.B. as C.C. remains in the rental unit. A.B. and C.C. are roommates.

Residential Tenancy Branch Policy Guideline 19—Assignment and Sublet provides in part as follows:

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.

As such, the *Act* does not apply to the living arrangement between A.B. and N.E.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge. I therefore do not have jurisdiction to hear the dispute between them.

Conclusion

The Applicant, A.B., is a roommate of the Tenant, N.E., and therefore A.B. does not have any rights under the *Act*. The *Act* does not apply to the dispute between A.B. and N.E.

I therefore decline 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: March 22, 2018

Residential Tenancy Branch