



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This teleconference hearing was scheduled in response to an application from the Applicant for the return of a security deposit. The Applicant was present in the teleconference hearing, as was one of the landlords of the subject property, representing herself and her spouse who were both named on this application. Both parties submitted affirmed testimony.

Service of the Notice of Dispute Resolution was confirmed by both parties and although no evidence was submitted by the Landlord, the Landlord confirmed receipt of the evidence of the Applicant.

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.

Issue(s) to be Decided

Does the *Residential Tenancy Act* apply to this matter?

Is the Applicant entitled to the return of the security deposit?

Background and Evidence

The Applicant testified that he moved into the rental unit on or around May 11, 2017. He moved in on the same day as his roommate, L.B. The Applicant testified that he did not have a tenancy agreement with the Landlords, but that his roommate, L.B. did. He reported that he paid the security deposit and rent to L.B., who then paid the Landlords.

The Applicant lived in the rental unit until approximately the end of June 2017. The Applicant submitted that he paid a security deposit of \$300.00, which he provided to L.B. towards the total security deposit of \$600.00 that L.B. paid to the Landlords. He does not remember what day he paid the security deposit on and did not submit any evidence showing that this amount was paid towards the security deposit.

The Landlord testified that she does not have a Tenancy Agreement with the applicant, either in writing or through an oral agreement. She testified that she has never met the applicant and that he was a roommate of L.B., who is the tenant who signed the Tenancy Agreement and who still resides in the rental unit. The Landlord confirmed that she has a security deposit from her current tenant, L.B., and that she never received rent directly from the Applicant, instead receiving it from the current tenant.

The Applicant submitted in evidence a receipt for rent paid in May 2017 from the Landlord showing a payment of \$1,200.00 from both the Applicant and tenant, L.B. The Landlord testified that this rental receipt was provided as it was needed by the applicant to provide to Income Assistance to establish the amount of assistance received for housing. There was no further evidence submitted on the file.

Analysis

Both the Applicant and Respondent testified and were in agreement that a Tenancy Agreement was not established between them and that monthly rent payments and the security deposit payment were made from L.B. to the Landlords during the approximately two months that the Applicant resided in the rental unit.

I refer to the *Residential Tenancy Branch – Policy Guideline 19 – Assignment and Sublet*:

“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.”

Accordingly, I have determined that there is no Tenant-Landlord relationship existing between the Applicant and the Respondents and instead, there is a Tenant-Landlord relationship between the Applicant’s roommate, L.B. and the Respondents. In accordance with the *Residential Tenancy Branch – Policy Guideline 19 – Assignment and Sublet*, the *Residential Tenancy Act* (the Act) does not apply to occupants who do not have a Tenancy Agreement with the Landlord.

In consideration of the oral testimony and evidence submitted, I find that there was insufficient evidence to establish the existence of a tenant-landlord relationship between the parties. Accordingly, I find that the Applicant was an occupant/roommate in the rental unit and therefore I decline jurisdiction.

Conclusion

The Applicant, D.S., was a roommate of the tenant, L.B. and not a tenant of the Respondents. Therefore, the *Residential Tenancy Act* does not apply to this matter and I 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: April 18, 2018

Residential Tenancy Branch