



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code MNSD

Introduction

This conference call hearing was scheduled in response to an application regarding the return of a security deposit. Both applicants attended the teleconference and no one called in for the respondent during the approximately 30 minute hearing.

The service of the Notice of Dispute Resolution was addressed during the hearing as the applicants submitted evidence of registered mail that was returned to them as “unclaimed”. The applicants testified that this was the Notice of Dispute Resolution package sent to the respondent at the address of the subject unit. The applicants confirmed that the respondent lived at that address with them while they were both residing there and that, to their knowledge, continues to reside at that address.

The tracking number for the Notice of Dispute Resolution is included on the first page of this decision and labelled as 1. A tracking number for an evidence package that was sent to the respondent at the same address was provided during the hearing and included on the first page, labelled as 2. The Canada Post website shows this evidence package as claimed, but signed for by someone other than the respondent.

The applicants testified that their Tenancy Agreements were submitted as evidence to the Residential Tenancy Branch; however, I did not have the agreements in their file. Both applicants faxed their Tenancy Agreements to the Residential Tenancy Branch after the hearing. After reviewing the Tenancy Agreements, I find that the respondent’s address for service is listed on both as a different address than that of the subject unit.

As per the above, I am not satisfied that the Notice of Hearing Package was properly served on the respondent. In any event, I have dismissed this application for the reasons set out below.

Issue(s) to be Decided

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

Are the applicants entitled to the return of their security deposits?

Background and Evidence

Applicant A.K. testified that he moved into the rental unit on September 1, 2015 and moved out on August 30, 2017. Monthly rent was \$500.00 and a security deposit in the amount of \$250.00 was paid upon move in.

Applicant A.U. testified that he moved into the rental unit on September 1, 2016 and moved out on August 30, 2017. Monthly rent was \$550.00 and a security deposit of \$275.00 was paid upon move in.

The applicants testified that the rental unit is a two-storey home and they both rented bedrooms on the second floor. The respondent lived on the main floor of the home and shared a kitchen with the applicants. The applicants testified that the respondent is not the owner of the home, but rents the home from the property owner and then rents out rooms in the home to others.

Analysis

Regardless of the existence of Tenancy Agreements between each applicant and the respondent, I refer to the *Residential Tenancy Branch – Policy Guideline 19 – Assignment and Sublet* to determine if the *Residential Tenancy Act* (the *Act*) applies to this matter:

“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.”

As the applicants testified that the respondent resided in the rental unit with them and was the original tenant of the property owner, I have determined that there is insufficient evidence to establish the existence of a tenant-landlord relationship in accordance with the definition of a landlord under the *Act*. Without the respondent present at the hearing, there is also insufficient evidence to establish that the respondent is “acting as agent on behalf of the landlord” (*Definitions and Policy Guideline 19*).

In addition, if the original tenant remains in the rental unit and rents out space in the unit to occupants, a sublet tenancy arrangement is not established. Instead, I find that the applicants and respondent were occupants/roommates. In accordance with the *Residential Tenancy Branch – Policy Guideline 19 – Assignment and Sublet*, the *Residential Tenancy Act* (the *Act*) does not apply to occupants/roommates and therefore I decline jurisdiction.

Conclusion

The applicants were occupants/roommates of the respondent and are not considered tenants according to the relevant legislation. 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 20, 2018

Residential Tenancy Branch