



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

On October 2, 2017, the Applicant made an Application for Dispute Resolution seeking a monetary order for the return of July 2017 rent, and for double the security deposit paid to the Landlord.

At the start of the hearing, I confirmed that C.M. attended the hearing, where she advised that she was the daughter of the Respondent F.M. I also confirmed that F.M. attended the hearing to represent himself. I then confirmed that the Applicant attended the hearing on his own behalf and was assisted by H.B., an advocate. All in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions.

The Applicant testified and supplied documentary evidence that he served the Respondent with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on October 11, 2017. This registered mail package went unclaimed. He then submitted that he served F.M. these documents personally on April 26, 2018 with witnesses.

I questioned the Applicant regarding why he used the address that he did for the registered mail and he stated that he had seen F.M. coming and going from that address. C.M. stated that the address is her residential address and that F.M. does not live there. She also stated that her mail goes to a general mailbox and that she received no notification of any registered mail package. F.M. stated that he was only informed of

the dispute resolution hearing after he was personally served with the Notice of Hearing package on April 26, 2018.

In reviewing the evidence before me regarding service of the Notice of Hearing and Application for Dispute Resolution, I am not satisfied that the Applicant satisfactorily complied with the requirements of rule 3.1 of the Rules of Procedure. However, I am satisfied that the Respondent was sufficiently served with notice of this hearing pursuant to Section 71(2)(c) of the Residential Tenancy Act (Act).

Issue(s) to be Decided

- Is the named Respondent a Landlord pursuant to section 1 of the Act?
- Is the Applicant entitled to a monetary award for the return of his security deposit pursuant to section 38 of the *Act*?
- Is the Applicant entitled to a monetary award for the return of his rent pursuant to section 67 of the *Act*?

Background and Evidence

All parties agreed that the residential property was a hotel which had burned down in June of 2017. C.M. testified that she was a manager and employee of the company that owned the hotel, and that she no longer was employed by this company. F.M. also testified that he was the bartender and employee of the company that owned the hotel; however, he no longer was employed by this company either.

Analysis

In reviewing the totality of the evidence, I find that during the Applicant's stay at the residential property, C.M. and F.M. acted as agents for the owner of the residential property.

However, as this employment arrangement had ended, I find that neither C.M. nor F.M. were still currently acting as agents for the owner of the residential property.

Section 1 of the Act defines a landlord, in relation to a rental unit, as any of the following:

- The owner of the rental unit, the owner's agent or another person who, on behalf of the landlord
 - Permits occupation of the rental unit under a tenancy agreement or
 - Exercises powers and performs duties under the *Act* or the tenancy agreement;
- The heirs, assigns, personal representatives and successors in title to a person referred to above; or
- A person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and exercises any of the rights of a landlord under a tenancy agreement or the *Act* in relation to the rental unit.

As such, neither C.M. nor F.M. would be considered a Landlord pursuant to section 1 of the Act. Consequently, I am satisfied that the Applicant has improperly named F.M. as the Respondent for this proceeding.

Conclusion

Based on the above, I dismiss, without leave to reapply, the Applicant's claim for a Monetary Order to recover rent, and for a return of the security deposit.

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: May 3, 2018

Residential Tenancy Branch