



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation pursuant to section 67 of the *Act*;
- return of a security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

The applicant appeared at the date and time set for the hearing of this matter. The respondent did not attend this hearing, although I left the teleconference hearing connection open until 1:56 p.m. in order to enable the respondent to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the applicant and I were the only ones who had called into this teleconference.

As only the applicant attended the hearing, I asked the applicant to confirm that he had served the respondent with the Notice of Dispute Resolution Proceeding for this hearing. The applicant testified that he had served the notice and his evidence by Canada Post registered mail on or around December 23, 2017. He stated that he had the tracking number at home, but not with him. As the applicant provided sworn testimony that he had served the respondent by registered mail, I find that the respondent was served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the applicant entitled to the return of rent and a security deposit, pursuant to section 38 and 67 of the *Act*?

Prior to the above noted determination, I must determine if I have jurisdiction under the *Act* to consider this application for dispute resolution?

Background and Evidence

In this case, the verbal rental agreement between the parties was never realized as the applicant never moved into the premises. The applicant provided the following testimony regarding the intended rental arrangement. The rental accommodation consisted of a bedroom in the respondent's house at a monthly rental rate of \$800.00.

The single kitchen and bathroom in the house was to be shared by the applicant, the respondent, and any other occupants in the house. The applicant provided the respondent with \$800.00 in rent and a \$400.00 security deposit via e-transfer in advance of his anticipated move in date of mid-November 2017.

However, a week before he was to move in, the respondent advised him that the current occupant of the intended rental bedroom had not yet vacated. The applicant suggested that he could push his move in date to December 2017 and apply the \$800.00 paid for November rent to his December rent.

The respondent advised the applicant that he would need to pay another \$800.00 for December rent, as he had already used the November rent to pay for other bills and no longer had the money. The applicant refused this suggested option and at that point, both parties no longer wished to pursue the rental agreement. The applicant asked to be refunded in full but has not received the return of his funds.

Analysis

Section 4(c) of the *Act* reads in part as follows:

This Act does not apply to...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,...

It was unclear if the respondent was the owner of that accommodation, or whether he was a tenant in that accommodation taking on roommates/occupants to assist with rent.

In the latter case where the respondent is a tenant taking on roommates/occupants, the applicant would have been entering into an agreement with someone other than a landlord as defined under section 1(c) of the *Act*, as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (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...

[My emphasis added]

In either scenario, the applicant would not have any rights or obligations under the *Act* as he was either sharing a kitchen and bathroom with the owner of the accommodation or with a tenant of the accommodation, who is not defined as a landlord under the *Act*.

Under these circumstances and based on the evidence before me, I find that the *Act* does not apply to this rental arrangement. I therefore have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: June 18, 2018

Residential Tenancy Branch