



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application under the *Residential Tenancy Act* (the *Act*) for the return of the security deposit, a Monetary Order for compensation and for the recovery of the filing fee paid for this application.

The respondent and one of the applicants were present for the teleconference hearing. Both were affirmed to be truthful in their testimony. The respondent testified that she was only aware of the hearing due to a reminder email from the Residential Tenancy Branch and that she did not receive documents regarding the hearing from the applicant.

Service of the Notice of Dispute Resolution Proceeding documents (the “Notice of Hearing”) was addressed. The applicant testified that the Notice of Hearing, along with copies of their evidence was sent to the respondent by registered mail. A copy of the registered mail receipt was included in evidence and the applicant testified that the package was mailed to the address that is the subject of this dispute, where the respondent resides.

Entering the tracking number on the Canada Post website confirms the package as unclaimed and returned to the sender. I accept that the Notice of Dispute Resolution Proceeding documents were duly served by the applicants in accordance with the *Act*. I also note that failure to claim or accept mail is not a ground for review under the *Act*.

Issues to be Decided

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

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

Are the applicants entitled to a Monetary Order for compensation?

Background and Evidence

Jurisdictional issues were brought up at the outset of the hearing. The respondent testified that she was a tenant of the home and rented out a room to the applicants. The respondent remained in the home during the time the applicants lived there and they shared a bathroom and kitchen.

The applicant agreed that the respondent was a tenant of the home who rented out a room to them. He also agreed that the respondent remained in the home while they resided there, but testified that since an agreement was signed and a security deposit was paid, a tenancy was established.

Analysis

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.”

Regardless of the existence of a tenancy agreement or the payment of a security deposit, as the respondent remained in the home with the applicants and was the original tenant of the Landlord, I find that the applicants were roommates of the respondent. In addition, if the original tenant remains in the rental unit, a sublet tenancy

arrangement is not established. The *Residential Tenancy Act* does not apply to roommates/occupants and therefore I decline jurisdiction.

Although the *Residential Tenancy Act* does not apply to this matter, the parties may further pursue this matter through other means such as the Civil Resolution Tribunal or Small Claims Court.

Conclusion

The applicants were occupants/roommates of the respondent and are not considered tenants. 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: June 15, 2018

Residential Tenancy Branch