



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Applicant under the *Residential Tenancy Act* (the "*Act*"), seeking the return of a security deposit and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicant, two agents for the Applicant (the "Agents"), and the Respondent. Although the Applicant was initially present, she voluntarily left the hearing after the participants were confirmed and her Agents represented her throughout the hearing. As a result, only the Respondent and the Agents provided affirmed testimony for my consideration. The Agents and the Respondent were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although both parties agreed that a tenancy existed, the Respondent claimed that the Applicant was in fact an occupant of the rental unit, and not a tenant, as the tenancy agreement was between himself and the Applicant's former partner. Although the Applicant did not provide any testimony herself, her Agents testified that both the Applicant and her former partner were tenants. Based on the conflicting testimony provided by the parties regarding whether the Applicant is a tenant under the *Act*, I find that I must first determine whether I have the jurisdiction to hear and decide this matter prior to assessing the merits of the Application itself.

The Legislation does not confer upon the Residential Tenancy Branch (the "Branch") the authority to hear all disputes regarding every type of relationship between two or more parties. The Branch only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations. Section 1 of the *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 1 of the *Act* also defines a tenancy as a tenant's right to possession of a rental unit under a tenancy agreement.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. In this matter it is the Applicant who has made a claim and as a result, I find that that it is incumbent upon the Applicant to satisfy me, on a balance of probabilities that they are a Tenant.

The parties provided conflicting testimony regarding whether or not the Applicant was a tenant, and although the Agents for the Applicant stated that the Applicant was a tenant, neither the Applicant nor her former partner, with whom the Respondent stated there was a tenancy agreement, provided any testimony for my consideration. The Agents pointed me to photographs of the interior of what they say is the rental unit as evidence that the Applicant was a tenant. However, there is nothing to link these photographs to the rental unit and even if the Applicant resided in the rental unit that does not mean she is necessarily a tenant under the *Act*.

The Agents did not submit or point me to any other documentary evidence to corroborate their testimony that the Applicant was in fact a tenant and although they stated that the Applicant has bank records showing cash withdrawals for the payment of rent and the security deposit, they acknowledged that these documents were not provided for my consideration. Further to this, the Agents stated that the Applicant's former partner was the one who arranged the tenancy with the Respondent and agreed that he dealt with the Respondent regarding all tenancy matters and the payment of rent. The Landlord testified that he never had a tenancy agreement with the Applicant, who was either a visitor or an occupant of the rental unit, and that he only ever had a tenancy agreement with the Applicant's former partner.

Having considered the conflicting and equally compelling affirmed testimony before me from both parties, and given the lack of documentary or other corroborative evidence from the Applicant, I find that the Applicant has not satisfied me on a balance of probabilities that she was a tenant of the rental unit in accordance with the *Act*. As a result, I decline to hear the Application for lack of jurisdiction. I encourage the parties to seek independent legal advice with regards to this matter.

Conclusion

I decline to hear the claim made by the Applicants for an order for the Respondent to comply with the *Act*, regulation, or tenancy agreement for lack of 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: July 24, 2018

Residential Tenancy Branch