



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On June 28, 2018, the Applicant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the return of the security deposit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Applicant and the Respondents attended the hearing and provided testimony.

Preliminary Matters

The Applicant and the Respondents agreed that they share this single family dwelling; that they share the kitchen and other common areas in the unit; that the Applicant rents a bedroom in the unit; that the Respondents have a Tenancy Agreement for the premises with the owner of the rental unit ; and, that the Applicant does not have a Tenancy Agreement with the owner.

I refer to Residential Tenancy Branch - Policy Guideline 19 to assist the parties in understanding what kind of relationships the Act may address. The Guideline acknowledges that 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 (Respondents) and the third party (Applicant). The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

Policy Guideline 27 states that 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. It also states that the Branch only has the jurisdiction conferred by the Legislation over landlords, tenants and strata corporations.

In this case, I find that the Respondents are not landlords and have not entered into a tenancy with the Applicant as defined by the Act. As a result, I am not satisfied that this is a landlord and tenant dispute over which I have jurisdiction under the Act. As a result, I decline to hear this matter for lack of jurisdiction and I encourage the parties to seek independent legal advice in relation to this matter.

Conclusion

As the Act does not apply to these parties, I find that I do not have jurisdiction in this matter and I dismiss the Application for Dispute Resolution.

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: November 13, 2018

Residential Tenancy Branch