



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application under the *Residential Tenancy Act* (the “Act”) for the return of a security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The applicant and respondent were both present for the teleconference hearing. The parties were affirmed to be truthful in their testimony. The respondent confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the applicant’s evidence. The respondent did not submit any evidence prior to the hearing.

Preliminary Matters

At the outset of the hearing, the parties provided information on the agreement between them which brought up a question about jurisdiction. The respondent stated that she rented the entire unit from the Landlord and then rented the bedrooms to roommates, of which the applicant was one. She stated that she still residing there, although she stayed at her partner’s home much of the time. She had a key and could come and go to the rental unit and she stated that it remained as her primary address.

The applicant stated that she had believed the respondent was a landlord. They signed a tenancy agreement for the rental of a room, and she stated that the respondent did not reside in the rental unit during the time that she lived there. However, she stated that the respondent had a key and could come into the rental unit when the applicant or other occupants needed something.

I also refer to *Residential Tenancy Policy Guideline 19: Assignment and Sublet* which provides clarifications on occupants/roommates as follows:

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.

Based on the testimony of both parties, I find that this was a roommate situation and that the respondent does not fit the definition of a landlord under the *Act*.

Although the parties were not in agreement as to whether the respondent continued to reside in the rental unit, or whether she moved out and sublet the unit, I find insufficient documentary evidence before me to establish that this was a sublet situation. In the absence of this information, I accept that the respondent continued to occupy the rental unit and therefore I find that this was a roommate situation. As such, the *Residential Tenancy Act* does not apply, and I decline jurisdiction.

Conclusion

The parties were roommates and therefore the *Residential Tenancy Act* does not apply. 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: November 28, 2018

Residential Tenancy Branch