



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The respondent did not attend this hearing, although I waited until 1:55 p.m. in order to enable the respondent to connect with this teleconference hearing scheduled for 1:30 p.m. The applicant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The applicant testified that on a copy of the Application for Dispute Resolution including the Notice of Hearing was served on the respondent in person.

Based on the above evidence, I am satisfied that the respondent was served with the Application for Dispute Resolution and Notice of Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the respondent.

Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the applicant entitled to a return of all or a portion of the security deposit including the filing fee for this application?

Background and Evidence

The rental unit was a shared two bedroom laneway house. The respondent had a lease with the owner of the property. The applicant did not have a separate agreement with the owner of the property. The applicant moved in as a roommate with the respondent and paid rent and a security deposit to the respondent directly.

The applicant is seeking a return of his security deposit from the respondent who was his roommate.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Pursuant to section 2 of the Act, the Act applies to **tenancy agreements**, rental units and other residential property.

A tenancy agreement is defined under section 1 of the Act as follows:

*"**tenancy agreement**" means 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;*

Landlord is defined under section 1 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;

The definition of a tenancy agreement under the Act implies that it is an agreement between a landlord and a tenant. The definition of landlord under the Act specifically excludes a **tenant occupying the rental unit**.

As the respondent in this case is a tenant occupying the rental unit, the respondent is not a landlord as defined under the Act; therefore, the agreement entered into between the parties is not a tenancy agreement as defined under the Act.

The applicant entered into an agreement with another tenant to share accommodations with that tenant. The relationship was one of roommates. I do not have jurisdiction under the Act for this type of living arrangement.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that I do not have jurisdiction over this matter.

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: December 7, 2018

Residential Tenancy Branch