



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 and were affirmed to be truthful in their testimony.

Preliminary Matter – Jurisdiction

As the Respondent had submitted evidence stating that the *Residential Tenancy Act* does not apply to this matter, the issue of jurisdiction was discussed at the outset of the hearing.

The Respondent stated that she is the tenant of the two-bedroom rental unit and rented out one of the bedrooms to the Applicant. She submitted into evidence a tenancy agreement for the unit that began in 2005 in which she is named as a tenant. She stated that she lived with the Applicant during the time the Applicant resided there and that they shared a bedroom and kitchen.

The Applicant stated that the Respondent did not live in the rental unit with her as she did not sleep there. However, she stated that the Respondent had access to the unit and used one of the rooms as an office that she would work at for a few hours a couple times a week. She stated that the Respondent would use the kitchen and bathroom while at the rental unit.

I refer to *Residential Tenancy Policy Guideline 19: Assignment and Sublet* which states the following:

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.

Although the parties were not in agreement as to whether the Respondent slept at the rental unit, I find that she continued to occupy the rental unit while the Applicant resided there, meaning that the Applicant did not have exclusive possession of the rental unit.

The parties agreed that the Respondent had access to the rental unit to come and go on her own accord and use the space during her time at the rental unit. As such, I find that this was a roommate situation in which the *Residential Tenancy Act* does not apply. Therefore, I decline jurisdiction.

Conclusion

The *Residential Tenancy Act* does not apply to this matter and therefore 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: December 18, 2018

Residential Tenancy Branch