



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and to retain the Tenant's security deposit.

The Applicant said she served the Respondent with the Application and Notice of Hearing (the "hearing package") by personal delivery on September 21, 2018, 3 days before the application was made to the Residential Tenancy Branch. The Applicant said she did this because she thought the Respondent may move out and not provide her with a forwarding address. The Tenant said he only received the Notice of Hearing from the Landlord and he did not have the evidence package. Based on the evidence of the Applicant, I find that the Respondent was not served with the Applicant's hearing package as required by s. 89 of the Act.

At the start of the conference call it was determined that the Applicant did not submit a tenancy agreement with the Respondent. The Applicant submitted an Employment Contract and an Addendum to the Employment Agreement. The Employment contract outlined the statement of work and wages the parties agreed to. The Addendum to Employment Agreement outlined the use of the living facilities provided by the Applicant for the Respondent.

Section 4 of the Act (what the Act does not apply to) says:

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) **are rented under a single agreement,**

As there is no tenancy agreement I must rely on the evidence submitted which is the Employment contract and Addendum to the Employment Agreement between the parties. The Applicant said she submitted a tenancy agreement in a previous dispute and that she was told not to duplicate evidence in this application. The Respondent said the last dispute was a settlement agreement between the parties. As I have no evidence that this is a residential tenancy agreement, I find this situation is an employment agreement involving living quarters. Consequently, as there is no tenancy contract between the Applicant and the Respondent; therefore I do not have jurisdiction to make a finding in this matter. The Applicant may want to seek legal advice to determine how to proceed with her claims.

In the absence of evidence to show there is a tenancy between the Applicant and Respondent the Residential Tenancy Branch does not have jurisdiction in this situation. I dismiss the application as I find no authority to decide this matter under the *Residential Tenancy Act*.

Conclusion

The application is dismissed 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: January 21, 2019

Residential Tenancy Branch