



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Occupant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on May 30, 2019. The Occupant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both sides were present at the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, the parties agree on the following:

- The owner and the occupant have known each other for years, and were involved by way of a previous tenancy at the owners' previous house.
- The occupant rented a basement suite at the owner's previous house, and lived there for from May 2014 until February 2018.
- The owners sold that house in early 2018, and the occupant moved the last of his belongings out of that unit on February 27, 2018.
- The owners bought a new house and moved into that house around March of 2018.
- The occupant kept some of his belongings in the basement of the new house for a short period of time.

In his application, the occupant has asserted that he had a verbal tenancy agreement to rent the basement of the owners' new house, starting March 2018. The owners stated they never agreed to rent him the basement suite, and there is no kitchen in the basement of the new house. The owners stated that they agreed to store some of the occupant's belongings temporarily while he searched for a new place to live but no tenancy was established at the new residence. The occupant never actually lived at the owners' new house. The occupant's belongings were at the owners' new house from February 27, 2018, until March 10, 2018. The owner stated that they never accepted any rent or security deposit from the occupant, and the only money they ever collected from the occupant was from the previous house, where he was their tenant. They also assert they were only trying to be nice by storing his things for a short period while he found a new rental unit.

The occupant stated he is looking for compensation because he was illegally evicted from the new residence and he was locked out of the unit around March 10, 2018. The owner asserts there never was a tenancy at the new residence (the one listed on this application for dispute resolution).

I have considered the totality of this application, and the evidence, and I find it clear there was a Landlord/Tenant relationship and a valid tenancy agreement at the owner's previous house. However, I find that when the occupant moved out of the owners' previous rental unit, that tenancy ended at the end of February 2018.

I find the occupant has failed to establish that there was a new tenancy agreement entered into after that time. There is no evidence of any written tenancy agreement, and

the parties disagree on whether or not there was a verbal tenancy agreement at the new house. I note the owners never collected any rent after the end of the previous tenancy, and they did not collect any new security deposit.

In this case, I find there is insufficient evidence that there was a meeting of the minds with respect to any potential rental agreement at the new house. It is not clear what the parties agreed upon, as the testimony provided at the hearing is conflicting. A contract (rental agreement) must have (at a minimum) a few components for it to be binding: offer, acceptance, and consideration. In this case I find there is insufficient evidence that these components were in place, such that I could find there is a tenancy agreement in place (verbal or otherwise). In other words, I find there is insufficient evidence to establish that a tenancy agreement was in place at the owner's new house, and therefore there is also insufficient evidence to establish that there is a tenancy under the Act. Given this, I find I must decline jurisdiction at this time as the rental address on the occupant's application is that of the owners' "new" house, and no tenancy was established at that address.

With respect to the previous tenancy, I note the Landlord held a deposit, and the Tenant is seeking it back. I find it important to note the following portion of the Act:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

If the occupant (tenant at the owners' previous house) wants his security deposit returned from the previous tenancy, he should begin by providing the owners with his forwarding address in writing. Then, the owner (Landlord at the previous house) must either repay the security deposit or make an application for dispute resolution, claiming against the deposit, within 15 days after receipt of the forwarding address.

The occupant is at liberty to apply for the return of that deposit, under the address of the old house where he used to be a tenant, once he has provided his forwarding address in writing. However, this application was filed under the owner's new house, and I find there was no tenancy established.

Conclusion

This application is dismissed in full without leave to reapply.

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: May 31, 2019

Residential Tenancy Branch