



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the applicant seeking remedy under the Residential Tenancy Act (the “Act”) for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for a return of her security deposit, and to recover the cost of the filing fee.

The applicant, a friend who was assisting with language issues, the respondent, and a friend assisting, attended the teleconference hearing. The parties were affirmed and the hearing process was explained to the parties. The applicant and the respondent did not raise any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

The applicant and respondent confirmed their email addresses at the outset of the hearing. They also confirmed their understanding that the decision would be emailed to both the applicant and respondent.

Issue(s) to be Decided

Does the Act apply to this dispute and do I have jurisdiction to decide this dispute?

If so, is the applicant entitled to monetary compensation?

Background and Evidence

The respondent testified that he is a tenant with a tenancy agreement with the owner of the property ("landlord") in a condo building and that he rents the spare bedrooms to other parties, who in turn pay him monthly rent.

The parties agreed that the applicant rented one of the spare bedrooms when she resided in the residential property; however, she vacated the rental unit on or about April 14, 2019, when the locks to the residential property were changed.

The respondent confirmed that the landlord is aware that he rents out various bedrooms in the home. The respondent pays rent to the landlord and the applicant does not pay rent to the landlord/owner, but to the respondent.

Analysis

Section 1 of the Act defines a landlord, in relation to a rental unit, as the owner, the agent for the owner, or someone on behalf of the owner who permits occupation of the rental unit and performs duties under the Act or the tenancy agreement. Additionally, a landlord is someone other than a tenant occupying the rental unit, who is entitled to possession, exercises any of the rights of a respondent under a tenancy agreement or the Act, and is a former landlord.

I accept the evidence before me that the respondent here is a tenant of the owner and that he supplemented his obligation to pay rent to the owner by renting out a portion of the rental unit.

In addition, I find that the respondent cannot meet the definition of a landlord as defined by the Act. There is no evidence that the respondent has the authority to act on behalf of the owner or as the agent and is excluded by subsection (c) of the definition of "landlord" in the Act.

Additionally, I find that the applicant/tenant does not have the rights conferred under the Act to a tenant; for instance, the applicant here cannot request a repair to the rental unit to the owner, or to allow a rent reduction, or request an order changing the locks, among other things.

Residential Tenancy Policy Guideline Manual, section 13: Rights and Responsibilities of Co-Tenants provides as follows:

Occupants

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, the respondent allowed the applicant to move into the premises and share rent, under an agreement. A new tenancy agreement with the owner of the rental unit to have the respondent added as a co-tenant was never entered into. Therefore, I find the applicant is an occupant as defined under the Policy Guideline and not a tenant and has no rights or obligation under a tenancy agreement.

On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a joint tenancy, the Act does not apply.

Therefore, I find this dispute as between the parties listed here as landlord and tenant does not fall within the jurisdiction of the Act.

Conclusion

Due to the above, I decline to accept jurisdiction of the applicant's application and I find that this dispute between the parties is not as between landlord and tenant.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

I do not grant the filing fee as a result.

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: June 10, 2019

Residential Tenancy Branch