



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On March 18, 2019, the Applicant applied for a Dispute Resolution proceeding seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking monetary compensation pursuant to Section 67 of the *Act*.

The Applicant attended the hearing. The Respondent attended the hearing as well, with E.G. attending as the owner of the rental unit. All in attendance provided a solemn affirmation.

The Applicant advised that he served the Notice of Hearing package, including his evidence, to the Respondent by registered mail but he was not sure of the date. The Respondent advised that he received this package near the end of March 2019. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Respondent was served the Notice of Hearing package and evidence.

The Respondent advised that he served his evidence to the Applicant by mail on June 6, 2019 and the Applicant confirmed that he received this. Based on this undisputed testimony, and as this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Applicant was served the Respondent’s evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Is the Applicant entitled to monetary compensation?
- Is the Applicant entitled to a return of the security deposit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

E.G. advised that she owns the rental unit, that it is a half duplex with two bedrooms upstairs and two bedrooms downstairs, that there are one and a half kitchens in the rental unit and two bathrooms. She stated that she lives in the rental unit, she rents out the remaining rooms to people, that everywhere with the exception of the rooms are common areas, and that she would occasionally use the downstairs bathroom and kitchen. She submitted a signed letter, as documentary evidence, from another roommate stating that the common areas “consisted of the living room, kitchen, bathroom, and laundry room.” The Respondent confirmed his understanding of this arrangement.

The Applicant advised that his roommate would complain to him about furniture being moved in the common areas of the rental unit, but the Applicant denied ever having moved the furniture. He stated that approximately a month or two into the tenancy, he observed E.G. knock on his roommate’s door asking to use the oven downstairs but the roommate could not accommodate her as she was already using the oven. However, this was the only time he saw E.G. attempt to use the downstairs kitchen and he never saw her use the downstairs bathroom.

Analysis

In my view, after hearing testimony from both parties, I find that the affirmed testimony of the Respondent and E.G., in conjunction with the signed letter from another roommate in the rental unit, carries more weight than the affirmed testimony of the Applicant. As such, I find that E.G. did have unimpeded access to the whole rental unit, did utilize a portion of the rental unit, and did share a kitchen and or bathroom with the

Applicant. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations where a tenant shares a bathroom or kitchen facilities with the owner of the accommodation. Consequently, I am satisfied that there is no Landlord/Tenant relationship between the parties as the Applicant is actually an occupant. Therefore, he has no rights or obligations under the *Act*. Ultimately, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under section 1 of the *Act*, the *Act* would not apply to this tenancy. As a result, I have no jurisdiction to consider this Application and render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this application.

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: July 15, 2019

Residential Tenancy Branch