



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 return of her security deposit, and to recover the cost of the filing fee.

The applicant and later in the hearing, the respondent, attended the teleconference hearing.

I affirmed the applicant into the hearing and began taking testimony. At the 9 minute mark into the hearing, the respondent called into the teleconference hearing.

Preliminary and Procedural Matters

The applicant and respondent confirmed their email addresses and 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

In response to my inquiry, the applicant testified that she was an occupant of the rental unit, and that she paid her monthly rent and a security deposit to the respondent, who

was a tenant of the owner of the rental unit. The applicant confirmed that she had no tenancy agreement with the respondent or with anyone else regarding this rental unit.

The applicant said that the rent she paid the respondent supplemented the respondent's monthly rent paid to her landlord.

When the respondent appeared, she denied that she collected the monthly rent from the applicant and in turn, paid monthly rent to the landlord.

The respondent did not deny collecting a security deposit and said that she has returned a portion of the security deposit to the applicant, withholding a part for unpaid hydro.

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 applicant and respondent are not in a landlord-tenant relationship.

Due to the disputed evidence, it is not clear whether this dispute is between co-tenants or between a tenant of another landlord and an occupant.

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.

In this case, I find the submitted evidence shows that the respondent is a tenant in the residential property, arranged for different occupants to move into the unit, collected rent from them and arranged for a security deposit to be paid and returned.

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 applicant and respondent does not fall within the jurisdiction of the Act.

Conclusion

Due to the above, I decline to accept jurisdiction of the applicant's application as 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 in another legal venue.

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: September 27, 2019

Residential Tenancy Branch