



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application under the *Residential Tenancy Act* (the “*Act*”) for monetary compensation, for the return of a security deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The applicant was present for the hearing as were two parties for the respondent (the “respondents”), although only one respondent was named on the application and served. The respondents stated that they did not receive the Notice of Dispute Resolution Proceeding package or any evidence from the applicant and instead received a reminder email from the Residential Tenancy Branch. The applicant submitted the registered mail tracking number which is also included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was sent on July 5, 2019 and was returned to the sender after it was unclaimed. As such, I find that the applicant served the respondent in accordance with Section 88 of the *Act* and they are deemed served 5 days later on July 10, 2019 pursuant to the deeming provisions of Section 90.

The parties were affirmed to be truthful in their testimony. As jurisdiction was in question the parties presented evidence on jurisdiction which will be addressed below.

Preliminary Matters – Jurisdiction

The applicant stated that he rented a room from the respondents and that the respondents resided in the home during the time he lived there, sharing the common areas of the home. The applicant submitted a ‘sublease agreement’ signed by both

parties on May 28, 2018. The agreement indicates that the applicant is renting the master bedroom and that the monthly rent is payable to the respondents who have the same address.

The respondents stated that they rent the home through a tenancy agreement with the home owner and that they rent out rooms of the home to others. They confirmed that they resided in the home at the same time as the applicant who rented a room from them and shared common areas.

Despite the agreement between the parties being called a 'sublease agreement', I do not find that the applicant was a sublease tenant. I refer to *Residential Tenancy Policy Guideline 19* which defines subletting as a transferring of rights and responsibilities under a tenancy agreement to a sub-tenant. The original tenant(s) move out of the rental unit for the period when the sub-tenant is residing in the rental unit. Instead, I find that the following applies as stated in *Policy Guideline 19*:

'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.

Policy Guideline 19 also provides clarification on roommates/occupants as follows:

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.

As the respondents have a tenancy agreement with the owner of the home and rented a room to the applicant, I find that the parties were occupants/roommates. I do not find that the applicant had a separate tenancy agreement with the home owner/Landlord and that the respondents were acting as an agent for the Landlord.

Instead, as the agreement to rent a room was with the original tenants of the rental unit, I find that the parties were roommates and do not meet the definition of a landlord/tenant relationship under the *Act*. As defined above, a dispute between occupants/roommates does not fall under the jurisdiction of the *Act*. Therefore, I find that I do not have jurisdiction over this matter. The application is dismissed, without leave to reapply.

Conclusion

The *Residential Tenancy Act* does not apply to this matter and therefore I decline 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: October 11, 2019

Residential Tenancy Branch