



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Tenant's Documents

The landlord ("**SB**") testified that she did not receive the notice of dispute resolution or the tenant's ("**OS**") evidence in accordance with the Act. However, she testified that she was prepared to proceed with the hearing in any event.

OS testified that he received documentary evidence from SB.

I find that both parties are deemed served with all documents as required by sections 88, 89, and 90 of the Act.

Preliminary Issue – Jurisdiction

In early 2019, SB resided in question (the “Unit”). She testified that she is not the owner of the Unit. She testified that in February 2019 she and OS entered into an agreement whereby he would rent a room in the Unit from her. Both parties agree that the OS never moved into Unit. However, both parties agree that had this occurred, the parties would have shared a kitchen. OS testified he would have had his own bathroom, whereas SB testified that they would have shared bathrooms.

Policy Guideline 27 states:

DISPUTES BETWEEN TENANTS AND ROOMMATES

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

The basis for this can be found in the Act. Section 2 of the Act states:

What this Act applies to

2(1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Section 1 of the Act sets out the following definitions:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

[...]

- (c) a person, other than a tenant occupying the rental unit, who

- (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Based on the testimony of the parties, I find that SB is not a "landlord" under the Act, as she is not an owner of the Unit and she is a tenant (of the Unit's owner) who lives in the Unit.

As the Act defines tenancy agreement as an agreement between a landlord and a tenant, and as SB is not a landlord, the arrangement between SB and OS whereby OS rented a room in the Unit is not a "tenancy agreement" as defined by the Act.

Similarly, the Act requires that a "rental unit" must be rented or be intended to be rented by a tenant. I find that a "tenant" can only rent a living accommodation from a "landlord" by way of a "tenancy agreement". As I have already found that SB is not a "landlord" and that the agreement between SB and OS is not a "tenancy agreement" I cannot find that the Unit is a "rental unit" as defined by the Act.

As such, I find that the Act does not apply to the dispute between SB and OS. Accordingly, I dismiss OS's application, 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: October 10, 2019

Residential Tenancy Branch