



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Applicant's Application for Dispute Resolution. The participatory hearing was held by teleconference on October 25, 2019. The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act; and,
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Jurisdiction

The issue of jurisdiction was raised at the outset of the hearing, and both parties were given the opportunity to present evidence and statements with respect to whether or not this rental falls under the *Act*.

The applicant stated that she lived as a member of the Ashley-Mar Housing Co-operative for almost 15 years, until the summer of 2018, when she decided to take a job overseas. At that time, the applicant asked the board of directors if she had permission to “sublet” the unit for a year. The applicant stated she was given permission to sublease for a period of one year, at the most.

After allowing the respondents to rent the unit from her for a period of one year (from July 2018 until June 2019), she decided to stay overseas, and she provided the co-op with her notice that she would be vacating the unit and terminating her membership with the co-op. The applicant stated the cooperative returned her initial deposit to her, and she no longer has a monthly agreement or membership with them. The applicant stated that she paid monthly “rent” to the co-op in the amount of \$867.00, but later she referred to this amount as her “housing charge”. The applicant stated that although she continued to pay \$867.00 per month to the co-op while she was away, she collected \$1,200.00 per month from the respondents as rent.

The applicant stated that she had a written agreement with the co-op, and has had this agreement since she moved in around 15 years ago. However, she stated she did not have a copy of this document any longer. The applicant was not able to provide further details regarding the arrangement she had with the co-op.

The respondents stated that they believe this is a tenancy and that it falls under the *Act* because the applicant made them sign a tenancy agreement, made them pay a security deposit to her, and had permission from the co-op board of directors to sublet. The respondents feel the applicant assumed the duties of a Landlord under the *Act* when she signed the agreement with them.

I have considered the situation presented here, and I acknowledge that the respondent feels the applicant is a “Landlord” under the *Act*. However, I also note the following portion of the *Act*:

What this Act does not apply to

4 This Act does not apply to

(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,

I note the applicant was still paying a monthly sum to the housing cooperative while the respondents were living there from July 2018, until June 2019 (while she was overseas). Which means her agreement and membership was still active with the housing cooperative while this secondary agreement with the respondents was ongoing. The applicant was in turn making a profit from the unit after getting permission from the cooperative to “sublet”. The undisputed evidence is that the applicant is a member of the cooperative, and was actively paying monthly amount to the cooperative.

Given all of the above, I find this is analogous to the above section of the *Act*, which excludes this type of living accommodation.

Based on the above facts, I find I do not have jurisdiction to hear this application.

Conclusion

I decline jurisdiction to hear this matter.

Given this finding, I find it is not necessary to reconvene this hearing.

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 25, 2019

Residential Tenancy Branch