



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on July 24, 2019, in which the Tenant sought return of their security deposit.

The hearing of the Tenant's Application was scheduled for teleconference at 1:30 p.m. on November 1, 2019. Only the Tenant called into the hearing.

Jurisdiction

A review of the Tenant's Application confirmed that the address of the rental unit and that of the Respondent were the same, indicating that the Applicant and Respondent resided together in the rental unit. When the hearing commenced the Applicant confirmed that he resided with the Respondent.

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge; rather, Arbitrators must only assume jurisdiction over tenancy disputes which are governed by the *Residential Tenancy Act*.

A Tenant under a tenancy agreement may assign or sublet their tenancy. However, an assignment or sublet assumes the Tenant is no longer in occupation of the rental unit. For greater clarity, I reproduce portions of the *Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet*

“ ...

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

...

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant."

In the case before me, the Respondent, S.K., continues to reside in the rental unit. The Applicant, T.W., confirmed that he rented a room from S.K. S.K.'s tenancy agreement was not provided in evidence however, there was no suggestion that T.W. was added as a Tenant to S.K.'s agreement, nor was there any suggestion that S.K. was acting as an agent of the Landlord. Accordingly, the living arrangement is more accurately described as roommate situation whereby the Applicant, T.W., is an occupant of the rental unit.

Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet provides the following guidance with respect to such situations and reads as follows:

"Occupants/roommates

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*."

In consideration of the above, I find the Applicant, T.W., is an occupant/roommate and as such the *Residential Tenancy Act* does not apply to this dispute. Accordingly, I decline jurisdiction.

Conclusion

I decline jurisdiction to hear the dispute between the parties on the basis that the Applicant has failed to provide sufficient evidence to support a finding that a tenancy between the Applicant and Respondent exists. Rather, I find that the Applicant, T.W., is a roommate of the Tenant S.K. and as such the *Residential Tenancy Act* does not apply to their dispute. 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: November 01, 2019

Residential Tenancy Branch