



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On September 3, 2019, the Applicant applied for a Dispute Resolution proceeding seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”).

Both the Applicant and the Respondent attended the hearing. All in attendance provided a solemn affirmation.

The Respondent advised that she was the Tenant in the rental unit, and she had a tenancy agreement with her Landlord. She in turn took in the Applicant and rented a bedroom to him in July 2019. She stated that she has no tenancy agreement in writing with the Applicant, that the Applicant was not listed as a Tenant on her tenancy agreement with her Landlord, and the Applicant was simply brought into the rental unit as a roommate. As such, it was her belief that the Act had no jurisdiction on this matter. She advised that the Applicant moved in mid-July 2019 and was only supposed to stay for the remainder of the month.

The Applicant confirmed that he did not have a tenancy agreement in writing with the Respondent, but it was his belief that the text messages he submitted as documentary evidence constituted a tenancy agreement. He advised that he moved in on July 13, 2019 and made a one-time payment of rent for the remainder of July 2019. He acknowledged that he was moving from Ontario to B.C., that his intention was only to stay in the rental unit for the remainder of the month, and that the rental unit was not to be his permanent residence.

All parties agreed that a security deposit of \$250.00 was paid by the Applicant.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Is the Applicant entitled to a return of the security deposit?

Analysis

When reviewing the totality of the evidence before me, I find it important to cite the following paragraph from Policy Guideline # 19 with respect to this scenario:

“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 my view, after hearing testimony from the both parties, the consistent evidence is that this was a short-term rental, not a periodic tenancy, and this was simply the Applicant's temporary residence for this period of time. Furthermore, this arrangement was made by the Respondent to bring in the Applicant to help pay the rent while the Respondent still lived in the rental unit as the Tenant. As such, it is clear to me that the Applicant does not meet the definition of Tenant as contemplated under the Act. I am satisfied that there is no Landlord/Tenant relationship between the parties as the Applicant is actually an occupant/roommate. Therefore, he has no rights or obligations under the Act. I find that even if the parties intended upon entering into a tenancy agreement as contemplated under the Act, the Act would not apply to this tenancy. Consequently, I have no jurisdiction to render a decision in this matter.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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: December 31, 2019

Residential Tenancy Branch