



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On August 30, 2019, the Applicant applied for a Dispute Resolution proceeding seeking a return of the pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

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

The Applicant advised that she served the Notice of Hearing package, including her evidence, to the Respondent by registered mail on or around September 9, 2019 but this package was refused. She stated that she also posted this package to the door of the Respondent on or around September 9, 2019 also. The Respondent advised that she received this package on the door on or around September 9, 2019. Based on this undisputed testimony, while this package was not served in accordance with Section 89 of the *Act*, I am satisfied that the Respondent was served the Notice of Hearing and evidence package.

The Respondent advised that she did not serve any evidence for consideration on this file.

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 pet damage deposit?
- Is the Applicant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 15, 2019 and ended when the Applicant gave up vacant possession of the rental unit on June 29, 2019. Rent was established in the amount of \$850.00, due on the first day of each month. A security deposit of \$425.00 and a pet damage deposit of \$425.00 were also paid.

The Respondent advised that she owns the rental unit, that she lives in the rental unit, that she rented out a room to the Applicant, and that she shared the kitchen with her. The Applicant confirmed that this information was accurate.

Analysis

In my view, after hearing testimony from both parties, I am satisfied that the Respondent owned the rental unit, had unimpeded access to the whole rental unit, and shared a kitchen and/or bathroom with the Applicant. As Section 4(c) of the *Act* stipulates, the *Act* does not apply in situations where a tenant shares a bathroom or kitchen facilities with the owner of the accommodation. Consequently, I am satisfied that there is no Landlord/Tenant relationship between the parties as the Applicant is actually an occupant. Therefore, she has no rights or obligations under the *Act*. Ultimately, I find that even if the parties intended upon entering into a tenancy agreement as contemplated under Section 1 of the *Act*, the *Act* would not apply to this tenancy. As a result, I have no jurisdiction to consider this Application and 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: January 8, 2020

Residential Tenancy Branch