



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicant on September 25, 2019. The Applicant sought return of a portion of a security deposit, compensation for serving a demand letter and reimbursement for the filing fee.

The Applicant appeared at the hearing. Nobody appeared at the hearing for the Respondent. I explained the hearing process to the Applicant who did not have questions when asked. The Applicant provided affirmed testimony.

The Applicant provided the full legal name of the Respondent which is included in the style of cause.

The Applicant submitted evidence prior to the hearing. The Respondent did not. I addressed service of the hearing package and Applicant's evidence.

The Applicant testified that the hearing package and evidence were sent to the Respondent by registered mail September 27, 2019. The Applicant confirmed the package was sent to the rental unit address. The Applicant testified that he understood the Respondent to still live at the rental unit address.

The Applicant had submitted a customer receipt with Tracking Number 1 on it. I looked this up on the Canada Post website which shows notice cards were left September 30, 2019 and October 07, 2019. It shows the package was unclaimed and returned to the sender.

Based on the undisputed testimony of the Applicant, customer receipt and Canada Post website information, I find the Respondent was served with the hearing package and evidence in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”). The Respondent cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Respondent is deemed to have received the package October 02, 2019.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Respondent.

This matter involved a situation where the Applicant never moved into the rental unit.

Given comments made in the Application about the Applicant renting a room and given the rental unit address is the Respondent’s address, I asked the Applicant to explain the situation with the rental unit. The Applicant testified as follows. The rental unit was the Respondent’s house. He applied to rent a bedroom in the house. The Respondent was the principal resident of the house. He believes it is 80% likely that the Respondent, her husband or her family owns the house. He strongly believes the house was the Respondent’s house and the Respondent had mentioned living there for decades. The Respondent had four kids which would stay at the house at times. He was never given the impression the Respondent was a tenant in relation to the house. There were four other rooms in the house. There was only one kitchen in the house. He would have been sharing the kitchen with the Respondent.

Given the testimony of the Applicant, I advised the Applicant of section 4 of the *Act* which states:

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation, (emphasis added)

I told the Applicant it is my view section 4(c) of the *Act* applies and the RTB does not have jurisdiction in this matter as everything he said about the circumstances points to the Respondent being the owner of the rental unit and there is no issue that they intended to share a kitchen. I told the Applicant I therefore could not decide this matter.

Given the circumstances as described by the Applicant, I find section 4(c) of the *Act* applies and therefore the *Act* does not apply to the Applicant and Respondent. I find the RTB does not have jurisdiction to decide this matter.

Conclusion

Pursuant to section 4(c) of the *Act*, the *Act* does not apply, and the RTB has no jurisdiction to decide this matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 24, 2020

Residential Tenancy Branch