Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNSD, FFT

Introduction

The Applicant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*") for the landlord to return part of all of the security deposit or pet damage deposit, for money owed or in compensation for damage or loss, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) on February 18, 2020. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The Applicant and Respondent both attended the hearing, and I provided the opportunity for each to present oral testimony and make submissions during the hearing.

The Applicant submitted oral evidence stating that they went to the address of the rental unit where the Respondent was residing and left the Notice of Dispute Resolution in the mailbox on October 17, 2019. The Respondent stated they received the Notice from the mailbox on that same date.

Preliminary Issue – Jurisdiction

The Notice of Dispute Resolution lists the Respondent as the landlord in this matter. The Respondent stated he is a tenant in the rental unit, and not the landlord of the unit. The Respondent stated that the actual landlord gave him the verbal agreement where he was paying rent on a monthly basis, and there is no tenancy agreement document in place. The total amount of rent was $2,300.00 per month, payable on the first of each month. The Respondent also paid the security deposit that was $1,150.00. This agreement was made between the Respondent and the landlord in December 2018.

The Respondent is a tenant at the rental unit address. The Respondent stated that the landlord, based in the same city and not a party to this dispute, gave the Respondent verbal consent to rent out rooms. The Respondent confirmed that he is not acting as an agent of the landlord. The Respondent lives with one other roommate and gave evidence on the past arrangement with the Applicant that ended in April 2019. The Applicant confirmed this evidence in oral testimony.

The *Act* defines the term 'landlord' as follows:

> **"landlord"**, in relation to a rental unit, includes any of the following:
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>   (i)   permits occupation of the rental unit under a tenancy agreement,
>   or
>   (ii)   exercises powers and performs duties under this Act, the tenancy agreement or a service agreement
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
> (c) a person, other than a tenant occupying the rental unit, who
>   (i)   is entitled to possession of the rental unit, and
>   (ii)   exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
> (d) a former landlord, when the context requires this.

The *Act* defines "tenancy agreement" as

> an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

I find from the testimony of both parties that the Respondent is a tenant who occupies the rental unit.

As a result, the Respondent in this matter does not meet the definition of a landlord, pursuant to section 1 of the *Act*. I find the Applicant here is not a tenant of the Respondent; rather, they are another occupant, or a roommate.

Based on these facts, and an application of the legislation, I do not have jurisdiction to hear this Application.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application for Dispute Resolution in its entirety, without leave to reapply.

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: February 20, 2020

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Residential Tenancy Branch