



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant and his advocate, DD, attended the hearing by way of conference call, the landlord did not. I waited until 1:44 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant and his advocate were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant, his advocate, and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution and evidence package on November 7, 2019 by way of registered mail to the landlord's address. The tenant provided the tracking information in their evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenant's application and evidence for this hearing on November 12, 2019, 5 days after mailing.

Preliminary Matter: Does the Residential Tenancy Branch have jurisdiction to hear the dispute between the parties?

The tenant testified that he rented a room from his landlord, the respondent in this dispute for \$600.00 per month. The two parties did not have a written tenancy agreement, but the tenant provided a handwritten note signed by both parties dated July 17, 2018 acknowledging the receipt of \$900.00 cash. \$600.00 was for the rent, and \$300.00 for a security deposit. The tenant states that he moved in on July 17, 2018, and was locked out by the landlord on October 19, 2018.

The tenant testified that the landlord had rented out the entire suite from the owner of the home, and in turn rented out a room to him. The tenant references his landlord as the “subletter” in his letter dated March 26, 2019 to the landlord.

RTB Policy Guideline #19 clearly provides the definition of a “sublet” versus a “roommate” situation, which states:

“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...”

By the above definition the tenant in this dispute cannot be considered a “sublet” or a “tenant”, but a roommate or occupant, as the tenant named in the original tenancy agreement still resided there. Based on the evidence, I do not find that the relationship between the parties is a tenancy.

I am unable to consider the application for the return of DM’s security deposit or his monetary application because I find that there is no tenancy agreement between the parties. DM is an occupant or roommate, and not a tenant under the definition of section 1 of the Act. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupant as a tenant. As I am not satisfied that the landlord agreed to include DM as a tenant in the tenancy agreement, the Act does not apply to their relationship. On this basis, I cannot consider DM’s application as I have no jurisdiction in this matter.

Conclusion

I find that DM is not considered a tenant, but an occupant or roommate in this matter. Accordingly, I decline to hear this matter as I have no jurisdiction to consider the 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: March 10, 2020

Residential Tenancy Branch