



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On February 28, 2020, the Applicant submitted an application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) for the return of their security deposit, and to recover her filing fee. The matter was set for a conference call.

Both the Applicant and the Respondent attended the hearing and were each affirmed to be truthful in their testimony. The Respondent and the Applicant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Jurisdiction

Jurisdictional issues were brought up at the outset of the hearing. Respondent and the Applicant lived in the rental unit together, each with their own room, and they shared a bathroom and kitchen.

The Applicant agreed that the Respondent, who had rented out a room to them, was a tenant of the property owner. The Applicant confirmed that the Respondent remained in the rental unit while they resided there.

I refer to the *Residential Tenancy Branch – Policy Guideline 19 – Assignment and Sublet*:

“Occupants/roommates

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.”

The Act defines a Landlord as:

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;

In this case, as the Respondent remained in the rental unit with the Applicant, who was the original tenant of the owner of the property, I find that the Applicant and the Respondent were roommates. In addition, as the original tenant remained in the rental unit, a sublet tenancy arrangement was not established in this case.

As the *Residential Tenancy Act* does not apply to roommates/occupants, I must, therefore, decline jurisdiction.

Although the *Residential Tenancy Act* does not apply to this matter, the parties may further pursue this matter through a court of competent jurisdiction.

Conclusion

I decline jurisdiction on 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 *Residential Tenancy Act*.

Dated: July 17, 2020

Residential Tenancy Branch