



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on September 15, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing. However, the Tenant did not. The Landlord stated that she sent the Notice of Hearing, and evidence to the Tenant's forwarding address by registered mail. The Landlord was asked what day she mailed the package, and did not know the exact date but estimated that it was several days after she applied at our office. During the hearing, I asked the Landlord if she had any proof of service or registered mail tracking information. The Landlord stated that she did not have any tracking information or anything to corroborate when and how she sent the Notice of Hearing and evidence.

The Landlord was allowed to explain the issues she was seeking at the hearing and to provide general background information regarding the tenancy. However, after further consideration following the hearing, I find I am not satisfied that the Landlord has sufficiently served the Tenant with the Notice of Hearing and evidence. The Landlord appeared vague about when she claims to have sent the package, and she was unable to provide any proof of service (mail tracking information), even though she states she sent it via registered mail. Ultimately, without further proof of service, and without more

compelling and clear evidence and testimony regarding service of the Notice of Hearing, I find the landlord has failed to sufficiently demonstrate the Tenant has been served in accordance with the Rule of Procedure and the Act.

As the Notice of Hearing has not been sufficiently served for the purposes of this *Act*, I dismiss the Landlord's application for monetary compensation, in full, with leave to reapply.

Typically, when a Landlord applies for monetary compensation and claims against a security deposit, and the application is dismissed, the arbitrator will order the security deposit be returned to the Tenant, provided the Tenant did not extinguish their right to its return. In this case, I note the Landlord provided some explanation during the hearing regarding the deposits she stated she holds. More specifically, she stated that the Tenant initially rented a room in her house, and she shared kitchen and bathroom facilities with the Tenant, in addition to other living space. Then, after the Tenant rented a room in her house for a period of time, the Landlord's self-contained rental suite in the basement became available. At that point, the Tenant moved into the suite and started a month-to-month tenancy in that space for \$850.00 per month, around December 2019.

I note the Act does not apply to living accommodation where the owner of the house shares kitchen or bathroom facilities with the Tenant. It appears the Landlord and the Tenant began their contractual relationship outside of the Act, when the Tenant agreed to rent a room from within the Landlord's house. In other words, the Landlord rented a room in her house to the Tenant, and I find this is type of living arrangement does not fall under the Act nor is it within my jurisdiction. The Tenant appears to have paid a deposit to the Landlord at the time she moved in and started renting a room and sharing living accommodation with the Landlord.

The Landlord provided copies of receipts from June 2018, showing the Tenant paid a deposit of \$200.00. I find this deposit was paid in accordance with the initial room rental agreement, which does not fall under the Act, as stated above. Since the Tenant paid a deposit to the Landlord at the time she was sharing a kitchen and/or bathroom with the Landlord, I find I have no jurisdiction to make any determinations regarding that deposit. In making this determination, I note there is insufficient evidence that there was a meeting of the minds with respect to whether or not the previous deposit (\$200.00, paid for a room rental) was ever intended to be transferred and applied to the new tenancy that was created when the Tenant moved into the self contained basement suite around December 2019.

It does not appear any deposit was collected at the time the Tenant moved into the basement suite. Since the suite was self-contained, I find there was a tenancy that was created under the Act at the time the Tenant took possession of that suite. However, any transactions or agreements that occurred when the Tenant was living upstairs with the Landlord falls outside of my jurisdiction, as it was not a landlord tenant relationship at that time.

Given all of this, I decline to order the return of any deposits that were collected under the initial room rental agreement from June 2018, as this is not within my jurisdiction.

In summary, I dismiss the Landlord's application for monetary compensation, with leave to reapply. However, her claim against the deposit is dismissed, without leave, as there is no evidence a deposit was ever paid for this tenancy. The deposit previously held was for a separate contractual relationship which falls outside of the Act.

Conclusion

I dismiss the Landlord's application for monetary compensation, with leave to reapply. However, her claim against the deposit is dismissed, without leave.

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: September 16, 2020

Residential Tenancy Branch