



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, OPU-PP, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of \$1,025.60; and for a monetary order for damage or compensation under the Act of \$3,568.78; and for an order of possession for unpaid rent and utilities, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated September 25, 2020; and to recover the \$100.00 cost of her Application filing fee.

The Landlord, the Tenant, and the Landlord's friend and roommate, D.C., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Applicant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The first matter for me to determine in this proceeding is whether I have jurisdiction to hear the Application. The Respondent argued that the Applicant is not a “landlord” pursuant to the Act, that they were just roommates. Based on this, he argued that the Act does not apply to this residential situation.

I heard from the Parties on the matter of jurisdiction, and advised that I would reconvene the hearing to review the Applicant’s primary claims, if I found that I do have jurisdiction, but not if I do not have jurisdiction.

Issue(s) to be Decided

- Do I have jurisdiction to hear this Application?

Background and Evidence

The Parties agreed that they do not have a written tenancy agreement, but that the Respondent, his friend, D.C., and his three sons moved into the residential property on April 15, 2018. They agreed that the Respondent paid the Applicant \$1,700.00 a month, in order to live in the suite.

In the hearing, the Applicant said:

The only tenancy agreement is a text message, and he’s been paying rent for the last several years. He put off signing the tenancy agreement that I drew up and signed by myself and my mother, but he never made himself available to sign it.

On September 23, 2020, I requested that the [property manager] update my permission to sublet the basement to the name of [the Respondent]. We were backdating, because we had not formally gained permission – so he sent it back to me by email. This is not meant to be a sub-let agreement. We have always been doing this since [the Respondent] moved in and with the Landlord’s permission, verbally.

In the hearing, the Respondent said:

When we moved in, we did so at night, because the suite was decommissioned by the City. It was drilled into us that we were moving in at night as roommates.

[The Applicant] said there was no protection by the *Residential Tenancy Act*, and to make sure we were aware of the situation of roommates under the Act.

When things started to go sour, in September 2020, she requested back-dated permission to 2018 from her landlord to sub-lease the property – backdated 2½ years. We were unaware that these were drawn up, and when she signed, she fraudulently backdated to 2018, but signed it September 25, 2020.

There was absolutely no written tenancy agreement ever done up. I was never made aware of any agreement, whatsoever. The text message was between her and I a month before moving in. We also had many speaker conversations following that text messages that talked about us moving into the property. But there was never any tenancy agreement, whatsoever, until we got her evidence package that was provided for this hearing.

First, on page 2 of our evidence, there is part of a text chain between myself and [the Applicant]. Things occurred after the suite had to be decommissioned. We were talking prior to the suite being decommissioned, but the police got the bylaws involved. The suite was decommissioned in March 2018.

The Respondent directed my attention to the Applicant's undated texts, which the Respondent said they exchanged in March 2018 (the Applicant did not dispute the approximate date of these texts). The Applicant texted to the Respondent:

I have to work in steps with the landlord. First I have to get him to agree to let us stay, then I'll bring up you afterwards.

Once he says yes....he really can't stop me from having roommates. I spoke with the city today, and they are not asking to be vacant downstairs, just no kitchen.

The Respondent also mentioned his evidence to which he said the Applicant had referred him, which includes evidence from the RTB about the rights and obligations of roommates in a tenancy. The Respondent's evidence in this regard mirrors the following from RTB Policy Guideline #19 ("PG #19"). PG #19, "Assignment and Sublet", includes the following:

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*.

. . .

Tenants and landlords should also be aware of s. 6 (3) of the Act, which states:

- 3) A term of a tenancy agreement is not enforceable if
 - (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Occupants should be aware that the director's authority is limited to the relationship between the original tenant and their landlord.

I asked the Applicant if she had her Landlord's written permission to rent part of the residential property to the Respondent. The Applicant said:

I had a text message, but he said you are allowed to have roommates, but that is only to appease the City. We're not roommates, even if he refers to us as roommates. On page 11 of my evidence package is an email from [the property manager], after [the Respondent] had contacted him. The [property manager] responded to [the Respondent] after he copied to Landlord. He said, 'You have your own agreement and you can operate accordingly'. He also said on more than one occasion that there's no contractual relationship between the Landlord and himself, and that his contract exists with me.

The Applicant referred me to six pages of her submissions, which she said contained text messages setting out the negotiation of the tenancy agreement between her and the Respondent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

Roommates can have agreements between themselves; however, this does not necessarily create a landlord/tenant relationship between these persons.

As noted in PG #19,

...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*.

In the case before me, I find that the “tenant” in PG #19 is the Applicant and the “third party” is the Respondent. I find that there is insufficient evidence before me to find that the Applicant was acting as an agent for the Landlord in this situation. Rather, I find it is more likely than not that the Applicant was acting on her own interests to share the cost of her rent with another person she allowed to occupy the basement of the residential property.

Based on the evidence and authorities overall, I find that the Act does not apply to the Applicant’s living situation described in the hearing. Accordingly, I find I do not have the jurisdiction to decide this matter. I find that the Applicant and Respondent were roommates according to PG #19.

Based on the evidence and authorities overall, I find that the Act does not apply to the Applicant’s and Respondent’s residential arrangement described in the hearing. Accordingly, I find I do not have the jurisdiction to decide this matter.

Conclusion

I decline to rule on this matter, as I have no jurisdiction to consider this Application. The Parties are referred to the Civil Resolution Tribunal for assistance in resolving their dispute.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 08, 2021

Residential Tenancy Branch