



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing originated as a Direct Request Proceeding and a participatory hearing was ordered in an Interim Decision dated December 22, 2020. This hearing dealt with the applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the respondent, pursuant to section 72.

The respondent did not attend this hearing, although I left the teleconference hearing connection open until 11:16 a.m. in order to enable the respondent to call into this teleconference hearing scheduled for 11:00 a.m. The applicant attended the hearing and was 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. I also confirmed from the teleconference system that the applicant and I were the only ones who had called into this teleconference.

The Interim Decision ordered the applicant to serve the respondent with the Interim Decision and Notice of Hearing Documents. The applicant testified that the above documents were served on the respondent via registered mail on December 5, 2020. The applicant provided the tracking number for the above mailing. The tracking number is located on the cover page of this decision. The Canada Post website states that the package was mailed on December 5, 2020 and delivered on December 9, 2020. I find that the Interim Decision and Notice of Hearing Documents were served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the applicant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the applicant entitled to recover the filing fee for this application from the respondent, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the applicant, not all details of the applicant's submissions and arguments are reproduced here. The relevant and important aspects of the applicant's claims and my findings are set out below.

The applicant provided the following undisputed testimony. The applicant rented one room in a house also occupied by the respondent. The applicant and the respondent lived together, sharing a kitchen, from the start of the tenancy, October 20, 2019, until December 2019 when the respondent moved out. The applicant testified that he moved out of the subject property on September 29, 2020.

The applicant testified that he and the respondent entered into a residential tenancy agreement. The residential tenancy agreement, RTB form #1 was entered into evidence and states that this tenancy agreement starts on October 21, 2019 and is for a fixed term ending on March 31, 2020. The applicant testified that he was aware when he entered into the tenancy agreement, that he was moving in with the respondent.

The applicant testified that he paid the respondent a security deposit of \$475.00 at the start of this tenancy. The applicant testified that he sent the respondent his forwarding address via registered mail on October 29, 2020. A registered mail receipt stating same was entered into evidence. The applicant testified that the respondent has not returned his security deposit and that he has not provided the respondent with written authorization to retain it. The applicant testified that he is seeking the return of his security deposit.

Analysis

Section 4(c) of the *Act* states that this *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

I find that the applicant and the respondent did not enter into a landlord/tenant relationship when the applicant moved in because the applicant and respondent lived together sharing a kitchen. I find that the applicant and the respondent entered into a room-mate relationship when the applicant moved in, in October of 2019.

I note that the signing of a residential tenancy agreement cannot change the nature of the relationship between the parties from roommate to landlord/tenant. The fact that the parties signed a tenancy agreement when they were in fact entering into a roommate agreement does not change rights and responsibilities of the parties and the applicability of the *Act*.

I find that the nature of the relationship between the parties changed when the applicant moved out of the subject rental property. From that time forward the parties were in a landlord/tenant relationship. Roommate and tenancy agreements are separate and distinct and governed by different law. I find that there is no evidence before me which converted the security deposit paid under the room mate agreement to a security deposit under a tenancy agreement. I find that the applicant paid his roommate a security deposit in the amount of \$475.00. I find that I do not have jurisdiction, pursuant to section 4(c) of the *Act* to adjudicate security deposit claims between roommates.

Conclusion

The applicant's application is dismissed 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 *Residential Tenancy Act*.

Dated: March 16, 2021

Residential Tenancy Branch