



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 an 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 pursuant to section 72.

The applicant was represented by their agent CH in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

At the beginning of the hearing, the respondent noted an error in the spelling of her surname. As neither party was opposed, the surname of the respondent was corrected to on the application to reflect the proper spelling.

The respondent confirmed receipt of this application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the respondent duly served with the application. As the applicant confirmed receipt of the respondent's evidentiary materials, I find the applicant duly served with this evidence in accordance with section 88 of the *Act*.

The respondent testified that the applicant's agent had sent the applicant's evidentiary materials by email, which the respondent had difficulty viewing in the format provided to the respondent. The respondent testified that they did not authorize the applicant or their agent to send the materials by email.

After allowing the applicant to consider their options, the applicant opted to proceed with the scheduled hearing. The applicant was given an opportunity to have their matter adjourned in order to re-serve the respondent with their materials in accordance with the *Act*. Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, the applicant confirmed that they consented to the exclusion of their evidentiary materials as the respondent was unable to review the materials before the scheduled hearing.

Preliminary Issue: Possible Conflict of Interest

At the end of the hearing, the respondent noted that the applicant's agent was a former colleague who used to work in the same office as the respondent. The respondent notes that both parties are known to each other, which could give rise to a possible conflict.

I have noted the concerns brought up in the hearing, and I am not satisfied that the past or current relationship of the applicant's agent and the respondent poses a conflict of interest in this case. In consideration of the application before me, I find that the applicant's agent was merely presenting evidence on behalf of the applicant, and I am not satisfied that the previous or current relationship between the parties affected CH's ability to represent the applicant in this dispute.

Issues(s) to be Decided

Does this matter fall within the jurisdiction of the Residential Tenancy Act?

If so, Is the applicant entitled to the return of their security deposit?

Is the applicant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the applicant entitled to recover the filing fee for this application?

Background and Evidence

The applicant filed this application as they feel that the respondent did not comply with the *Act* by returning their security deposit within the time required, or by filing an application to retain the deposit. The respondent disputes that a tenancy was in place, as the terms were not yet finalized under an tenancy agreement. The respondent does not dispute that on January 14, 2021 the applicant had sent the respondent a deposit in the amount of \$775.00, which the respondent still holds.

The respondent testified that they had posted an advertisement for the rental unit, and the respondent had agreed to hold the rental unit for the applicant if a “reservation deposit” was paid. The respondent stopped advertising at this point, but testified that the terms of the agreement were not finalized, including the amount of monthly rent as both parties were discussing options, such as whether the respondent would include the garage. The respondent testified that on January 16, 2021, the applicant had requested another viewing, which took place on January 17, 2021. On January 30, 2021, the applicant informed the respondent that they could no longer rent out the suite, and provided a forwarding address on February 9, 2021.

The applicant testified that the deposit was a security deposit, and that both parties had entered into an agreement for the applicant to rent the unit on March 1, 2021. The applicant testified that a written agreement was not drafted as the plan was for one to be done on February 28, 2021 when the respondent, who lives out of town, attends the rental property. The applicant testified that the rent would be \$1,550.00, and the tenancy was to begin on March 1, 2021 for that amount. The applicant argued that they would not have paid \$775.00 if it was not their intention to rent out the suite. The applicant testified that the respondent was able to find a new tenant for March 1, 2021, and did not suffer any financial losses.

Analysis

The definitions of a “tenancy”, “rental unit”, and a “tenancy agreement” are outlined in the following terms in section 1 of the *Act*:

“tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement;

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

“rental unit” means living accommodation rented or intended to be rented to a tenant;

Sections 12 and 13 of the *Act* sets out the requirements of a tenancy agreement, and what must be included in the standard terms (boldface included for emphasis)

Tenancy agreements include the standard terms

12 The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out **all** of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

I find it undisputed that a deposit was paid by the applicant in the amount of \$775.00 to the respondent on January 14, 2021. It is also undisputed that the applicant never moved into the rental unit, having given notice on January 30, 2021 that they would not be doing so. The applicant testified that an agreement was made between the parties for a tenancy to begin on March 1, 2021, and the respondent is bound by section 38 of the *Act* in dealing with this deposit.

The respondent argued that the terms of the tenancy were still being discussed and finalized, and that the deposit was simply to reserve the suite until both parties could do so.

In consideration of the evidence and testimony before me, I find that although some terms of a tenancy were discussed between the parties such when the tenancy was to commence, the evidence does not support that all of the standard and required terms of a tenancy agreement were finalized and agreed upon such as the amount of the monthly rent, and what facilities this rent would include such as use of the garage. I also find that the evidence and testimony does not support whether the tenancy was to be a periodic tenancy, or a fixed term tenancy, and if a fixed term, when this term would end. I find the evidence supports the respondent's testimony that these terms were still being negotiated, and that both parties had yet to enter into a tenancy agreement.

I find that the evidence supports the respondent's testimony that the deposit was paid to hold the rental unit in consideration of the low vacancy rate in the area, and upon receipt of the deposit, the respondent would give priority to the applicant to rent out the suite once they had agreed on the final terms of the tenancy agreement. I find that the intention of the deposit was to ensure that the respondent would not fill the vacancy while the negotiations were taking place, and the final terms finalized. I find that the evidence supports that as of January 16, 2021, after the deposit was paid, the applicant had made a request to view the property again. I am not satisfied that on January 14, 2021, or on any subsequent date, that both parties had entered into, and finalized a tenancy agreement between the two parties.

I, therefore, find that a tenancy did not exist between both parties, and I am unable to consider the application as I have no jurisdiction to hear this matter.

Conclusion

I find that I do not have jurisdiction to hear this matter under the *Residential Tenancy Act*.

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: August 31, 2021

Residential Tenancy Branch