



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlords return the tenant's personal property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing and each gave affirmed testimony. The tenant also called 1 witness, and the landlords called 2 witnesses, all of whom gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Preliminary Matter

During the course of the hearing the landlords indicated that they are not landlords and were not landlords of the tenant; no tenancy was created or entered into.

The tenant testified that the tenant rented a room from the landlords, and the tenancy began during the 3rd week of June, 2021, and ended on October 27, 2021. No security deposit or pet damage deposit were paid, however the tenant paid rent in the amount of \$400.00 per month and was paid \$200.00 per month for looking after the mother of one of the landlords, so the tenant paid the landlords the difference of \$200.00 per month from July to October, 2021.

The first (KS) landlord testified that the landlords rent from another landlord, and a copy of that tenancy agreement has been provided for this hearing. The landlords received permission from their landlord to allow the tenant to stay in the rental unit for a maximum of 2 months, and then would have to move on or rent would be increased and they can't afford that. When the tenant was told she could stay with the landlords, the tenant knew it was for 2 months only. The tenant didn't leave, and was there for 5 months. The landlords tried to help the tenant and their landlord offered 2 other places to rent, but the tenant never accepted either.

The second landlord (LV) testified that the tenant knew that after 2 months she would have to leave. The landlords' landlord also offered a place, but the tenant didn't want to go downtown. The landlord (LV) told the tenant she would have to leave. She made the landlords live with her, but she was a guest that overstayed her welcome. The landlords were friends of the tenant and tried to help her get her learner's license and a job. The landlords were not landlords, but friends trying to help her out. The tenant was not a tenant, a friend only who asked if she could stay till she found a place, and knew she had to get out but refused.

Analysis

My authority is under the *Residential Tenancy Act*, and if the *Act* does not apply, then I must refuse jurisdiction.

Residential Tenancy Policy Guideline 9 – Tenancy Agreements and Licenses to Occupy states:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time.

I also refer to Residential Tenancy Policy Guideline 19 – Assignment and Sublet, which states, in part:

While the RTA does not specify what the rights and responsibilities of the original tenant and subtenant are, the common law, pursuant to s. 91 of the RTA, may apply. In the event of uncertainty around the rights and responsibilities of parties to a sublease agreement, an arbitrator will consider the individual circumstances and evidence of each case in making a determination.

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 use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet. If the original tenant transfers their rights to a subtenant under a sublease agreement and vacates the rental unit, a landlord/tenant relationship is created and the provisions of the Act apply to the parties. If there is no landlord/tenant relationship, the Act does not apply. Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

In this case, I find that the landlords never intended to be a landlord of the tenant, or to create a tenancy. I find that there is no landlord/tenant relationship and the Act does not apply.

In the circumstances, I am not satisfied that a tenancy was created, and I decline jurisdiction.

Conclusion

For the reasons set out above, I find that the *Residential Tenancy Act* does not apply and I decline jurisdiction.

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 11, 2022

Residential Tenancy Branch