



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD-DR

Introduction, Preliminary and Procedural Matters-

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for a return of her security deposit.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated June 30, 2022, which should be read in conjunction with this decision.

The adjudicator said that the applicant provided a tenancy agreement that was signed by the landlord and "Person K.M. and Person G.J.", not the applicant here or a proof of Service of a Forwarding Address. As a result, the adjudicator ordered the direct request proceeding be reconvened to a participatory hearing.

At this participatory hearing, only the tenant attended. The tenant submitted evidence that she served the landlord with her Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on July 2, 2022. The Canada Post tracking history shows that the mail was not claimed and returned to sender. The tenant was affirmed.

The hearing proceeded to consider the tenant's application.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Does the Act apply to this dispute, and if so, is the tenant entitled to the relief sought?

Background and Evidence

The tenant said that the tenancy began on March 1, 2021 and ended October 31, 2021. The tenant submitted that she paid a security deposit of \$1,550.

When questioned about the written tenancy agreement filed in evidence, the tenant confirmed that her name was not listed on the document as being a tenant. The tenant said that her name did not appear as she was a minor at the time.

The tenant said that her aunt paid the security deposit of \$1,550 as the tenant was not in the country at the time. The tenant submitted that the deposit went to a property management company who listed the rental unit. I note that the landlord listed on the written tenancy agreement is an individual rather than a property management company.

The tenant said that she paid the security deposit, as the two other tenants paid the first month's rent. The tenant said that during the tenancy, she paid rent to the other two tenants, who in turn, paid the landlord the monthly rent.

Filed in evidence was a copy of an e-transfer of \$1,550.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In order for the applicant to succeed in this application, the applicant must show that the *Residential Tenancy Act* applies. In order to find the Act applies, I must be satisfied that the parties entered into a tenancy and that the parties had a landlord and tenant relationship.

The Act defines a tenancy agreement as “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 licence to occupy a rental unit”.

Although the tenant said her name was not on the tenancy agreement because she was a minor at the time, section 3 of the Act allows a person who has not reached 19 years of age to enter into a tenancy agreement.

The tenant presented a copy of the tenancy agreement between an individual landlord and two other persons. The tenant is not listed on the written tenancy agreement as being a tenant and the tenant did not provide evidence that she made rent payments. The tenant could have supplied evidence that she paid her portion of rent to the other persons, such as with a bank transfer or withdrawal of funds for her portion of rent, if that was the case.

Additionally, when reviewing the evidence of the e-transfer of funds, I find the tenant submitted insufficient evidence that the sender was her aunt who sent \$1,550 and the recipient of the funds was not listed on any tenancy documents. Apart from that, the date of payment appears to be April 29, 2021, whereas this tenancy began on March 1, 2021.

For these reasons, I find the tenant submitted insufficient evidence that the applicant and respondent entered into a tenant-landlord relationship.

As a result, I therefore decline to find jurisdiction to resolve this dispute.

The applicant is at liberty to seek the appropriate legal remedy to this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 07, 2022