



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, RR, FFT

Introduction

On September 9, 2022, the Applicant applied for a Dispute Resolution proceeding seeking a Monetary Order for the cost of emergency repairs pursuant to Section 33 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Applicant attended the hearing. The Respondent attended the hearing as well, with V.L. attending as his Tenant. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Applicant advised that she served the Respondent with the Notice of Hearing and evidence package by email on September 23, 2022. The Respondent confirmed that he consented to service of documents by email and that he received this package from the Applicant. Based on this undisputed testimony, I am satisfied that the Respondent was duly served with the Notice of Hearing and evidence package. Consequently, I have accepted this documentary evidence and will consider it when rendering this Decision.

The Respondent acknowledged that he did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Applicant entitled to a Monetary Order for compensation?
- Is the Applicant entitled to a rent reduction?
- Is the Applicant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Applicant advised that the tenancy started on May 1, 2022, and that it ended on August 31, 2022, when she gave up vacant possession of the rental unit. She stated that rent was established at an amount of \$850.00 per month, and that it was due on the first day of each month. As well, a security deposit of \$425.00 was also paid. She testified that she paid the rent and the security deposit directly to V.L. prior to moving in, and that she continued to pay rent to V.L. for each month that she lived in the rental unit. As well, she acknowledged that she was a sub-tenant of V.L.

She then testified that she was presented with a tenancy agreement by the property manager of the Respondent after she had already paid monies to V.L. She confirmed that V.L. was not the property manager of the Respondent, but was the Tenant of the Respondent for whom she was sub-letting from. She stated that she signed this tenancy agreement; however, she acknowledged that it was not signed by the Respondent or the property manager. Despite this tenancy agreement not being signed by the Respondent or the property manager, it is her position that this tenancy agreement formed a Landlord/Tenant relationship between her and the Respondent. She claimed that Section 13 of the *Act* does not require a signature in order to constitute a formalized tenancy agreement. While she insisted that her Landlord was the Respondent, she could not explain why she continued to pay her rent directly to V.L. if this person was not her Landlord.

V.L. advised that he was a Tenant of the Respondent, and that he had sub-let the rental unit to the Applicant. He confirmed that he received \$850.00 per month from the Applicant for a tenancy starting on May 1, 2022, and ending on August 31, 2022, when the Applicant gave up vacant possession of the rental unit. He also acknowledged that he reduced the May 2022 rent by \$100.00, and that he received a security deposit of \$425.00 from the Applicant.

The Respondent advised that a property manager, that was not V.L., represented him as he was not in the country. He acknowledged that neither he nor the property manager ever signed a tenancy agreement with the Applicant. In addition, he testified that he never received any rent or security deposit from the Applicant.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In my view, after hearing testimony from both parties, I am satisfied that the Applicant has not sufficiently established that there was ever a Landlord/Tenant relationship that was created between her and the Respondent. Firstly, all parties acknowledged that V.L. was the actual Tenant of the Respondent, that V.L. then sub-let the rental unit to the Applicant, and that the Applicant was a sub-tenant of V.L. Secondly, all parties confirmed that all monies were paid directly from the Applicant to V.L.

While the Applicant attempted to suggest that a tenancy had been created between her and the Respondent by way of a tenancy agreement that was not signed by the Respondent or the property manager, Section 13 of the *Act* states that a “tenancy agreement must comply with any requirements prescribed in the regulations...” Furthermore, I find it important to note that Section 12 of the *Residential Tenancy Regulation* states that the Landlord must ensure that a tenancy agreement is “signed and dated by both the landlord and the tenant.” Clearly, as this tenancy agreement was not signed by either the Respondent or his property manager, I do not accept that a tenancy had been created between the Applicant and the Respondent.

In addition, if the Applicant truly believed that the Respondent was indeed her Landlord, and that this was formalized by the tenancy agreement that was presented to her in early May 2022 after she had already paid rent and a security deposit to V.L., it is not logical, nor is it consistent with common sense or ordinary human experience, that she would continue to pay V.L. the rent. While she claimed that neither the Respondent nor the property manager offered her the option to pay either of them, I do not find it reasonable to conclude that any person who believes a particular person is her Landlord, would then go and continually pay her rent to another party that was not her Landlord, or a representative of her Landlord. This simply does not make any rational sense, and the fact that the Applicant continued to pay rent to V.L. would further lead to a reasonable conclusion that the Applicant was of the belief that V.L. was her actual Landlord.

Given that Section 12 of the *Act* stipulates that a tenancy agreement includes the standard terms “whether or not the tenancy agreement is in writing”, it is clear that an

unwritten, month-to-month tenancy was created between the Applicant and V.L. when she sub-let the rental unit and monies were exchanged. As she is undoubtedly the sub-tenant of V.L., there is no Landlord/Tenant relationship between her and the Respondent. Therefore, I have no jurisdiction to render a Decision in this matter.

Furthermore, as the Applicant is the sub-tenant of V.L., a Landlord/Tenant relationship has been created between these two parties, and any dispute under the jurisdiction of the *Act* would be between the Applicant and V.L.

As the Applicant named the wrong party as her Landlord and was thus not successful in this Application, I find that the Applicant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I decline to hear this matter as I have no jurisdiction to consider this Application.

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: February 1, 2023

Residential Tenancy Branch