Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord supplied a copy of a hand-written note given to him by the tenant on April 30, 2012. The note requested return of the deposit to a forwarding address.

The landord served copies of the Application for Dispute Resolution Notice of Hearing and evidence to thetenant's forwarding address by registered mail on May 16, 2012. A copy of the envelope was supplied as evidence. The envelope had been returned to the landlord by Canada Post and was stamped showing that the tenant was unknown or had moved.

As the landlord served the tenant to the address provided by the tenant on April 30, 2012, I find that the tenant was sufficiently served with Notice of the hearing; however, the tenant did not attend the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $1,950.00 for damage or loss?

May the landlord retain the deposit?

Is the landlord entitled to filing fee costs?

Jurisdiction

The landlord provided the following details in relation to the tenancy;

- He rents a home from the property owner, Mr. G;
- He pays rent directly to Mr. G.;
- He rents rooms to individuals in order to assist him in making rent payments to Mr. G.; and
- He does not act as the agent for Mr. G.

The *Act* defines a landlord as follows:

> **"landlord"**, in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
     (i) permits occupation of the rental unit under a tenancy agreement, or
     (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
(c) a person, other than a tenant occupying the rental unit, who
     (i) is entitled to possession of the rental unit, and
     (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
(d) a former landlord, when the context requires this;

From the evidence before me I find that the applicant is a tenant, who has an agreement with Mr. G. The applicant then supplements his obligation to pay rent to the landlord by having roommates.

The applicant collected a security deposit from the respondent, who I will define as the "roommate" and collected rent payment which was combined with rent owed by the applicant to his landlord.

I find that the applicant cannot meet the definition of a landlord as defined by the *Act*. The applicant confirmed that he does not have the authority to act on behalf of the owner or as the agent and is excluded by subsection (c) of the definition of "landlord" in the Act as he occupies the rental unit. On this basis I find that the legislation has contemplated this type of circumstance and in the absence of clear evidence of a joint tenancy, the *Act* does not apply.

Therefore, I find that the respondent is an occupant. Occupants are defined in the *Residential Tenancy Policy Guideline Manual*, section 13: Rights and Responsibilities of Co-Tenants:

> ### *Occupants*
>
> *Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

Therefore, I find that neither the applicant nor the respondent have any jurisdiction under this *Act*.

Dated: July 11, 2012.

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Residential Tenancy Branch