



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled to deal with a tenant's application for return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord raised the issue of jurisdiction. The landlord was of the position that the Residential Tenancy Act does not apply to their "roommate agreement". The landlord submitted that he owns the property and that he shared the kitchen and bathroom facilities with the tenant. The landlord also submitted that the tenant and the landlord's children often spent time in each other's living space. The landlord stated that the lower kitchen only had a hot plate and that the landlord and the tenant were free to go between units as the adjoining door did not lock.

The tenant agreed that the adjoining door did not have a lock; however, the tenant described how he rented the basement suite in the house which had its own kitchen, bathroom and separate entry. The tenant described the kitchen in the rental unit as having a fridge, sink and range and the bathroom in the rental unit had a three piece bathroom. The tenant was unaware that the landlord ever used the kitchen or bathroom in the rental unit. The tenant acknowledged that he had been invited up to the main level of the house as a guest of the landlord or landlord's family.

The parties provided consistent testimony that they became acquainted after the tenant placed an online advertisement looking for living accommodation for 10 weeks and the landlord responded to his advertisement. The landlord stated that he initially offered the tenant a living unit with "more autonomy" for \$200.00 per week but that amount exceeded the tenant's budget. The landlord stated that he subsequently agreed to take a lesser amount of \$150.00 per week and be "roommates" with the tenant.

The landlord pointed to a written document signed by both parties entitled "Rooming Agmt/House-share Agmt". Above the parties' signatures is a statement "This is not a tenancy agmt it is a rooming agreement."

The Act applies to all residential tenancy agreements entered into between a landlord and a tenant with respect to possession of a rental unit unless the living accommodation is specifically excluded from the Act. A rental unit is defined as living accommodation rented to a tenant or intended to be rented to a tenant. Living accommodations that is specifically excluded from the Act are provided for under section 4. Excluded living accommodations include those where the tenant and the owner of the property share kitchen or bathroom facilities. Section 5 of the Act also provides that parties cannot avoid or contract out of the Act and that any attempt to do so is of no effect.

I noted that the written document signed by the parties did not indicate the parties were sharing a kitchen or bathroom or provide any other indication that would point to the living accommodation being excluded under section 4 of the Act. Rather, the document merely states that it is a rooming agreement and not a tenancy agreement without any further explanation. Considering the Act contemplates that parties may attempt to avoid or contract out of the Act, as seen in section 5, I find it is insufficient to merely make a statement that the contract is not a tenancy agreement. Rather, the statement must also be supported by actual circumstances that are inconsistent with a tenancy or circumstances that point to a specific exclusion from the Act. Since the contract before me does not specifically provide any reason to indicate the parties did not have a tenancy, I proceed to consider the circumstances as provided to be both parties.

Upon hearing from both parties, I found the tenant more credible and his version of events more likely than those described by the landlord. In other words, I rejected the landlord's assertion that he used the kitchen and bathroom in the basement as he did not indicate or provide any reason for doing so or given a specific example of when he did so. Nor was his use of the basement bathroom or kitchen witnessed by the tenant. I also found the landlord's explanation that he lowered the rent to \$150.00 in exchange for becoming roommates did not make sense to me since the two were strangers before this tenancy began. Although I heard that the landlord's children and the tenant frequently spent time together in each other's living areas, I was reasonably satisfied that those times were likely due to the tenant and the landlord's children being guests of each other.

In light of the above, I found that the written contract was an attempt to avoid the Act and that the parties had a tenancy agreement that was not excluded from the Act. As such, I accepted that I had jurisdiction to resolve this dispute.

The parties were able to reach a settlement agreement during the hearing that I have recorded by way of this decision and the Order that accompanies it.

Issue(s) to be Decided

What are the terms of settlement?

Background and Evidence

In full and final settlement of any and all disputes regarding this tenancy the parties agreed to the following:

1. The landlord shall pay to the tenant the sum of \$500.00 without further delay.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record a settlement agreement in the form of a decision or order.

I have accepted and recorded the settlement agreement reached by the parties during this hearing and make the term(s) an Order to be binding upon both parties.

In recognition of the settlement agreement I provide the tenant with a Monetary Order in the amount of \$500.00 to ensure payment is made.

Conclusion

The parties reached a settlement agreement during the hearing that I have recorded by way of this decision. In recognition of the settlement agreement the tenant has been provided a Monetary Order in the amount of \$500.00 to serve and enforce upon the landlord if necessary.

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: December 10, 2015

Residential Tenancy Branch

