



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenant's ("applicant") application pursuant to the *Residential Tenancy Act* ("the Act") for the return of her security deposit pursuant to section 38 and to recover the filing fee for this application from the landlord ("respondent") pursuant to section 72.

Both parties (applicant and respondent) attended the hearing and were given an opportunity to be heard, provide testimony. The respondent interrupted the applicant whenever she spoke, arguing each fact stated by the applicant and disrupting the hearing: the respondent was given a full opportunity to make submissions nonetheless. The applicant confirmed receipt of the documentary materials submitted as evidence by the respondent and the respondent acknowledged the Application for Dispute Resolution served by the applicant.

Preliminary Issue: Jurisdiction

At the outset of the hearing, it was necessary to inquire as to whether the Residential Tenancy Branch has jurisdiction to hear this matter. The respondent testified that she rented rooms within a duplex. She provided undisputed testimony that she was also a renter, she collected payments towards rent from the other residents and that the kitchen and baths were shared between all of the occupants. The applicant testified that she did not really know that the respondent was not "really a landlord".

Residential Tenancy Policy Guideline No. 19 and the *Residential Tenancy Act* sections relating to assignments and sublets,

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and a new agreement (usually called a sublease) is typically entered into by the original tenant and the sub-tenant. The original tenant remains the tenant of the original landlord, and, assuming that the original tenant moves out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

[emphasis added]

In this case, the parties did not dispute that the respondent (described in the application as the landlord) and applicant both resided within the residential tenancy unit. The applicant testified that she lived in a bedroom in the basement, that another occupant lived in a bedroom in the basement and that there was one bathroom downstairs and one bathroom upstairs. Further, the applicant testified that one shared kitchen was in the upper portion of the rental unit (where the respondent lives).

The applicant testified that she moved into a room on the premises on January 28, 2017 and moved out of the unit on February 28, 2017. She testified that she paid one month's rent and that she had given the respondent money as a deposit which was not returned to her. There was no written tenancy agreement between the parties and the tenant did not provide documentary evidence for this hearing. The applicant testified that she "had the impression" that she and the respondent had agreed to a month to month tenancy" in an amount of \$890.00 to 900.00 – she was unable to recall the exact amount.

Analysis: Preliminary Issue/Jurisdiction

In considering the evidence and submissions of both parties testified that;

- *The applicant and respondent both reside in the rental unit;*
- *Two to four residents reside in the rental unit at any given time;*
- *Occupants share one living area: kitchen, bathroom and other common areas;*
- *The respondent rents the rental unit from a third party – the owner;*
- *The respondent accepts "rent" from the applicant and other occupants;*
- *There is no written agreement between the applicant and respondent;*
- *There are no precise terms to the living agreement/arrangement between the applicant and respondent.*

For a matter to be considered under the *Residential Tenancy Act*, both parties to the application must have a role that fits within the scope of the *Act*. To consider a matter under the *Act*, a tenancy must be formed with both a tenant and a landlord. Under the *Residential Tenancy Act* definitions section (section 1), a landlord is defined;

"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 owner, ...

(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 respondent, when the context requires this;
[emphasis added]

The respondent in this matter does not own the rental unit or claim to act on the behalf of the owner. The applicant provided no evidence to suggest that the respondent was acting on behalf of the owner by renting out rooms on the premises. Contrary to the wording of section 1(c), the respondent in this matter is a tenant occupying a rental unit and therefore is excluded from being considered a landlord under subsection 1(c) or any of the other categories that define a landlord under the *Act*.

Both parties testified that the respondent offered bedrooms with shared kitchen and bathroom to the respondent and that the applicant briefly became one of three to four occupants (at any given time) to this residence including the respondent. The respondent testified that she gathers money each month from the occupants, including the applicant for the month of January 2017. The respondent testifies that she pays a set rental amount to the landlord/owner regardless of the number of individuals residing in the rental unit. While a tenancy *may* be created without a written and signed residential tenancy agreement, no written agreement was created for this living arrangement. The taking of a portion of the rent and a “security deposit” from another resident, as the respondent is alleged to have done with the applicant does not on its own constitute a residential tenancy.

Residential Tenancy Policy Guideline No.19 addresses alternative agreements, including assigning and subletting. The Policy Guideline states,

A sublease is a lease given by the applicant... of residential premises to a third person (the sub-tenant or sub-lessee). ... The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the sub-landlord of the sub-tenant.

The policy with respect to a sublease is that the sub-landlord (the original tenant) retains their obligations with respect to the tenancy. The policy further states;

A tenant may assign or sublet his or her interest in a tenancy agreement or lease with the consent of the landlord. ... the proposed new tenant is not a party to the tenancy agreement until such time as the respondent has agreed to assignment or sublet, and the formal transfer is made.

A fundamental requirement of any tenancy is an agreement, a meeting of the minds. As with all tenancy matters, this agreement should address the use of the unit itself as well as common areas, services and facilities. There was no evidence to suggest that the respondent sought the consent of the landlord. The applicant acknowledged that neither party signed a written tenancy agreement. As well, the respondent did not vacate the rental unit. While there may have been some informal and changeable understanding between the applicant and respondent, the

testimony of both parties is evidence the applicant and the respondent were roommates, perhaps co-tenants.

Based on the description of the rental arrangement before me, I find that any arrangement was neither a tenancy nor a sublet and therefore the arrangement is not governed by the Residential Tenancy. The applicant's assumptions and failure to know the true nature of her agreement with the respondent is insufficient to describe this agreement as a tenancy. As a result, I find that I do not have jurisdiction in this matter; the matter of the "security deposit" or the matter of the filing fee.

Conclusion

I decline to hear this matter as I do not have 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: January 31, 2018

Residential Tenancy Branch