



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNDC

Introduction

The Application for Dispute Resolution filed by the Applicant seeks a monetary order in the sum of \$1650.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Respondent on July 19, 2018.

Issues to be Decided

The issue to be decided is whether the applicant is entitled to a monetary order and if so how much?

Background and Evidence:

On May 22, 2014 the landlord and SZ and CY entered into a fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2014, end on May 30, 2015 and become month to month after that. The rent was \$850 per month. The tenants paid a security deposit of \$425.

The tenancy agreement included a provision that No additional occupants were permitted in excess of 14 days unless the Tenant requested and received written consent from the landlord. It also provided written consent was necessary to sublet the rental unit.

CY passed away a couple of years later.

The Applicant testified that he responded to an advertisement and moved into the rental unit and occupied the second bedroom starting September 2016. The Applicant testified the landlord was aware that he was living with SZ. The landlord disputes this saying the first time she became aware was in early March 2017.

The Applicant testified he would pay \$550 per month to SZ. He would accompany him to a bank machine and SZ would deposit it in his account and SZ would pay the full rent to the landlord.

The Respondent provided evidence that they received noise complaints and they issued a breach letter addressed to SZ and CY on March 14, 2017. The Respondent subsequently issued a one month Notice to End Tenancy addressed to SZ and CY on March 21, 2017. SZ disputed the Notice and it was set for hearing at the end of April 2017. The application was withdrawn as the landlord found SZ a rental unit in another building.

The Applicant testified the Respondent served the Notice to End Tenancy only after he placed a notice on the notice board stating it was the landlord's obligation under the Act to make certain repairs.

On April 7, 2017 the Applicant was forced to leave the rental unit on 10 minutes notice. The Respondent attended with the police and accused him of being a trespasser. The Respondent made it difficult for him to get his belongings. He eventually obtained his belongings at the end of April 2017. The Applicant seeks compensation of 3 months rent.

The Respondent provided evidence that SZ is a client of the Canadian Mental Health Association. They became aware that SZ had allowed the Applicant to move in in March 2017. The CMHA program does not allow additional people to move into a unit without the permission of CMHA and the Property Manager.

Law

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

The definition of “tenancy agreement” provides as follows;

"tenancy agreement" means 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;

Policy Guideline #19

“Occupants/roommates

Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. **The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act. (my emphasis)**

Analysis

An arbitrator only has the jurisdiction to consider disputes dealing between landlords and tenants under the Residential Tenancy Act or Manufactured Home Park Tenancy Act. After carefully considering all of the evidence I determine that a tenancy agreement does not exist between the Applicant and the Respondent for the following reasons:

- The tenancy agreement is between SZ and CY and the Respondent. The Applicant was not a party to this agreement.
- The Applicant may have a tenancy agreement with SZ. However, this does not bind the Respondent.
- The Applicant did not apply nor did he receive consent in writing to become a Tenant.
- I determined the Applicant is an “occupant” as defined in Policy Guideline #19. As a result the Applicant does not have rights or responsibilities under the Residential Tenancy Act.

The Respondent may or may not have acted without legal authority when she called the police to have the Applicant removed from the rental unit on April 7, 2017. However, I determined a Residential Tenancy arbitrator does not have legal authority to consider this dispute as the Applicant is not a Tenant of the Respondent. A declined to hear this dispute for lack of jurisdiction.

This decision is final and binding on the parties.

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: November 15, 2018

Residential Tenancy Branch