



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the Respondent pursuant to section 72.

The Respondent did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the Respondent to call into this teleconference hearing scheduled for 1:30 p.m. The Applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Applicant and I were the only ones who had called into this teleconference.

The Applicant gave undisputed sworn testimony that they sent the Respondent a copy of their dispute resolution hearing package by registered mail on September 21, 2018. I find that the Respondent was deemed served with this package in accordance with sections 89 and 90 of the *Act* on September 26, 2018.

Preliminary Issue- Does this Application fall within the Jurisdiction of the Act?

Although the Respondent did not attend this hearing, they did submit written evidence that the relationship between the Applicant and the Respondent was one of a tenant and a roommate. As such, and as the Respondent was not acting on the landlord's

behalf in obtaining the Applicant as a roommate, the Respondent asserted that the relationship between the Applicant and the Respondent was not one that fell within the jurisdiction of the *Act* as the Respondent was not a landlord as defined in the *Act*.

At the hearing, the Applicant confirmed that they had no direct landlord/tenant relationship with the owner of this property, the Respondent's landlord. The Application also confirmed that the Respondent was not acting on the property owner's behalf in securing the Applicant as a roommate who shared living space with the Respondent and had her own room within the Respondent's rental suite.

As noted at the hearing, the Residential Tenancy Branch's Policy Guidelines 19 and 27 clearly establish that roommates have no rights or responsibilities pursuant to the *Act* and that no landlord/tenant relationship exists in situations such as those presented in this application.

The relevant portion of Policy Guideline 19 on Assignments and Sublets reads as follows:

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...

The relevant portion of Policy Guideline 27 on Jurisdiction reads as follows:

4. DISPUTES BETWEEN TENANTS AND ROOMMATES

The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

For example, if Tenant A enters into a tenancy agreement to rent a 2 bedroom rental unit from their landlord and then rents the second bedroom out to Tenant B, the RTA would not apply to a dispute between those tenants even if Tenant B has exclusive possession of the second bedroom. Under the tenancy agreement between Tenant A and the landlord, Tenant A is entitled to possession of the 2 bedroom rental unit. Since Tenant A is still occupying that rental unit, Tenant A is excluded by definition from being a landlord under the RTA. The director will decline jurisdiction to resolve these types of disputes...

Depending on the particulars, the Civil Resolution Tribunal may have jurisdiction to resolve disputes between tenants and roommates. Visit civilresolutionbc.ca for more information...

As the relationship between the Applicant and the Respondent was one between roommates and not between a landlord and tenant, I have no jurisdiction to consider this application.

Conclusion

I decline to consider this application as I lack jurisdiction to do so.

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 16, 2019

Residential Tenancy Branch