



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The Applicant claims for return of her security deposit pursuant to s. 38 of the *Residential Tenancy Act* (the “*Act*”).

J.C. appeared as the Applicant. L.C. appeared as the Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Applicant advised that the Notice of Dispute Resolution was served by having it personally served it on the Respondent on October 28, 2021. The Respondent acknowledges receipt of the Notice of Dispute Resolution on that date. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act* on October 28, 2021.

Neither party was able to demonstrate proper service of their evidence on the other. The Applicant says she served her evidence on the Respondent on January 25, 2022, which is in breach the 14-day time limit imposed by Rule 3.14 of the Rules of Procedure. The Respondent indicates that she served her evidence by posting it to the Applicant’s door on January 21, 2022. The Applicant says she did not receive the Respondent’s evidence and has no home for which to have evidence posted. To include the late service of the Applicant’s evidence would be procedurally unfair to the Respondent. To include the Respondent’s evidence would also be unfair as posting to a door is not permitted under s. 89(1) of the *Act*. Further, the Applicant does not appear to have a forwarding address for which evidence could be posted. Neither party’s evidence is included into the record.

Preliminary Issue – Jurisdiction

The Respondent says she is not the Landlord. She says that she is not the property owner for the residential property and is, in fact, a Tenant at the residential property. The Respondent says she rents the upper portion of the residential property from the Landlord and took possession on October 1, 2021.

The Respondent says that the Applicant was a roommate, moving into a room on the upper level on October 3, 2021. The Respondent says that the rental was to expand to the basement unit, however, that was never part of the tenancy with the Landlord.

The Applicant acknowledges there is no signed tenancy agreement and asked for it to be provided to her. The Applicant's claim is with respect to a basement unit. The Applicant says she never took possession of the basement unit. The Applicant says that she is not sure who the property owner was, and that the rental was to be through the Respondent.

Based on the parties' submissions, there does not appear to be a landlord tenant relationship. There is no signed tenancy agreement. The Applicant never took possession of the basement unit. Further, the Applicant acknowledged that she was unaware of the property owner's identity and that the rental was to be through the Respondent. The Respondent says she is not the property owner and that she's the tenant for the upper portion of the property.

I find that the Respondent is not the Landlord as she does not fit the definition set out in s. 1 of the *Act*. The Respondent is not the property owner, a point that is not directly refuted by the Applicant. Indeed, the Applicant's submissions would tend to reinforce that the Respondent is not the property owner. The Respondent says she rents the upper unit as a tenant. This was not directly disputed by the Applicant. The Applicant's dispute is with respect to a basement unit in which neither party has possession and one for which the Applicant acknowledges to have never taken possession. Indeed, there does not appear to be any tenancy agreement for the basement unit, either written or oral.

At the hearing, I advised that I do not have jurisdiction to determine disputes between roommates. I find that the parties were roommates, however briefly, and shared

accommodations in the upper portion of the residential property in October 2021. As made clear by Policy Guideline 27:

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.

As this dispute is one between roommates, I do not have jurisdiction to determine the dispute. Accordingly, the Applicant's application is dismissed.

Conclusion

I do not have jurisdiction to determine the issues in dispute between the parties. Accordingly, the Applicant's application is dismissed without leave to reapply.

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: February 01, 2022

Residential Tenancy Branch