



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed July 21, 2016 wherein he sought monetary compensation from the Respondent.

The hearing was conducted by teleconference and was scheduled for 1:30 p.m. on January 19, 2017. The Applicant called into the hearing at 1:33 p.m. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Applicant stated that he served the Respondent in person with his Application for Dispute Resolution and the Notice of Dispute Resolution Hearing on July 21, 2016. He further stated that this service was witnessed by his friend "G.". He was not able to provide a last name because he stated that he has only known G. for a short while. The Applicant further testified that the Respondent was aware of the hearing as at 8:00 a.m. on the morning of the hearing she asked him to sign a piece of paper saying that he broke the bedframe and he would not sign.

After 20 minutes, and after I had heard from the Applicant and was confirming his email address, the Respondent called into the hearing.

Both parties provided affirmed testimony. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

I informed the parties during the hearing that I would deal with the issue of jurisdiction prior to considering the Applicant's claim, as should this matter fall outside the jurisdiction of the *Residential Tenancy Act*, I would have no authority to deal with it.

Issues to be Decided

1. Does the *Residential Tenancy Act* apply to the dispute between these two parties?
2. If so, is the Applicant entitled to monetary compensation from the Respondent?

Background Evidence

The Applicant testified that he rents a furnished bedroom in a basement suite he shares with the Respondent. He stated that he moved into the basement suite on July 31, 2015. He further stated that he pays the Respondent \$400.00 and that he paid her a security deposit in the amount of \$200.00.

The Applicant claimed that he has a verbal tenancy agreement with the Respondent to rent a furnished bedroom. He also stated that the Respondent informed him that she has authority from her Landlord to sublet to him.

In terms of the claim before me, the Applicant stated that he sought compensation in the amount of \$200.00 representing \$50.00 per month for the four months he says the Respondent failed to fix the bedframe in his room. He stated that he came to this figure as he has a significant disability in that he has a "bad back". He further stated that after four and a half months of sleeping on a slanted bed, the Respondent's boyfriend replaced the bedframe.

In reply to the Applicant's claims, the Respondent confirmed that she rents a basement suite from the Landlord T.M. She further confirmed that the Landlord has given her authority to rent out one of the rooms to others. She confirmed that the Respondent pays \$400.00 per month in rent although she claimed he not pay a security deposit.

The Respondent stated that she was not willing to compensate the Applicant as the bedframe was new when he moved in and that he broke it due to overuse. She stated that she only replaced it because she did not want to hear the Applicant complain about it anymore.

In reply, the Applicant stated that he did not break the bedframe and that had he done so, he would have fixed it. The Applicant further stated that he only weighs 240 lbs and there were no "shavings near the frame" so he believes it was not broken due to use, but a faulty design.

Analysis

The power and authority of the Residential Tenancy Branch is derived from the *Residential Tenancy Act*. The dispute resolution process does not create a court and as such, Arbitrators delegated under the *Act*, do not have inherent powers arising under the common law which are possessed by a judge; rather, Arbitrators must only assume jurisdiction over tenancy disputes which are governed by the *Residential Tenancy Act*.

A Tenant under a tenancy agreement may assign or sublet their tenancy. However, an assignment or sublet assumes the Tenant is no longer in occupation of the rental unit. For greater clarity, I reproduce portions of the *Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet*

“ ...

Assignment is the act of permanently transferring a tenant’s rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

...

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.”

In the case before me, the Respondent, J.S., continues to reside in the rental unit. The parties agreed that she rents a room to the Respondent. She did not provide a copy of her tenancy agreement in evidence however, there was no suggestion that D.S. was added as a Tenant to her agreement, nor was there any suggestion that she was acting as an agent of the Landlord. Accordingly, the living arrangement is more accurately described as roommate situation whereby the Applicant, D.S., is an occupant of the rental unit.

Residential Tenancy Branch—Policy Guideline 19—Assignment or Sublet provides the following guidance with respect to such situations and 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*.”

In consideration of the above, I find the Applicant, D.S., is an occupant/roommate and as such the *Residential Tenancy Act* does not apply to this dispute. Accordingly, I decline jurisdiction.

Conclusion

The Applicant, D.S., is a roommate of the Tenant J.S. and as such the *Residential Tenancy Act* does not apply to their dispute. I decline 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 19, 2017

Residential Tenancy Branch