



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute codes

MNDC MNSD FF

Introduction

This hearing was convened in response to an application by the tenant for compensation for damage or loss under the Act, regulation or tenancy agreement, for the landlord to comply with the Residential Tenancy Act (the Act), and for recovery of the filing fee for this application.

The tenant and the landlord both attended the conference call hearing and participated with their prior submissions, their solemnly sworn testimony. The parties were permitted to present evidence and ask questions and participate fully in this process.

The applicant testified that they submitted some document evidence to the residential Tenancy Branch the previous week, upon which they wanted to rely in this matter. On further enquiry the applicant agreed that they supplied the Residential Tenancy Branch with their documentary evidence the day before this hearing. The applicant testified they forwarded the same package to the respondent the day before this hearing as well. The respondent testified that they have not received the purported evidence from the applicant. Given the applicant's testimony, and given that the respondent has not received the applicant's evidence, and given that the applicant did not serve their evidence in concert with the Rules and Procedures for serving evidence for this hearing, I ruled the applicant's evidence dated January 27, 2010 as inadmissible, and the hearing proceeded on the balance of merit in this matter.

The respondent advised this hearing that in her determination, a Dispute Resolution Officer does not have jurisdiction in this matter as per the Residential Tenancy Act Section 4 (c) – in which the Act does not apply – **Sec. 4 (c)** living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Issue(s) to be decided

Do I have jurisdiction in this matter?

Is the tenant entitled to the monetary amounts claimed?

Background and evidence

Despite the parties' affirmation to be truthful in their testimony, this hearing heard very contrasting testimony.

The hearing was provided with a copy of the parties' *Room Rental Agreement* (the Agreement) signed on October 19, 2009, effective November 01, 2009, as well as a copy of the property's BC Assessment notice showing the landlord as the owner.

The tenant advanced that the Agreement constitutes a tenancy agreement with all the rights and obligations afforded by the provisions of the Residential Tenancy Act, and on that basis determined that the Act and this Dispute Resolution Officer (DRO) have jurisdiction, and therefore their claim for monetary compensation is valid.

The landlord advanced that the Agreement was conceived, written and understood by the tenant to be a shared tenancy with the landlord, who is owner of the suite. The landlord claims the tenancy, and the Agreement includes provision that the tenancy is for a *room* in the residential suite, with *common access* to, or shared, living room, dining room and kitchen. The landlord explained the shared access was with her, the landlord and owner of the suite, and therefore this DRO does not have jurisdiction over this matter. In contrast, the tenant argued that the shared access provisions of the Agreement were destined to be with another room renter for the second bedroom, under a separate Room Rental Agreement, and not the landlord, herself. The tenant testified that another renter subsequently came to share the residence in this matter and that the landlord did not reside in the suite. As a result, considerable time was dedicated to the issue of jurisdiction prior to advancing on the merit of the tenant's claims for compensation.

The tenant's testimony is as follows:

- The tenancy started November 04, 2009 when the tenant responded to an advertisement for a room and bathroom rental in a 2 bedroom suite, and shared access to the remainder of the suite – living room, kitchen, and dining room.
- 10 days later another individual rented the other bedroom.

- The tenant did not see the landlord the entire month of November or in December 2009 and communicated via e-mail with the landlord.
- The landlord did not store or have any of her belongings in the suite.
- One month after the start of the tenancy, the landlord phone the tenant and told them they were to vacate the following month on Jan 01, 2010
- In the middle of December the tenant received a phone call from the landlord that the tenant had to vacate by week's end. That evening the landlord forced her way into the suite, made a bed on the sofa and said she was planning on staying that night. Police were called and the landlord was removed from the suite.
- Several days later, the landlord entered the suite, changed the locks on the front door and removed the tenant's belongings into storage.
- The tenant was forced to stay away from the suite. As a result, they are claiming compensation for loss of right to quiet enjoyment in the amount equivalent of rent paid for November = \$500, December = \$500, return of their security deposit (although tenant did not apply) and general compensation for cleaning of stored clothing, and miscellaneous damages of \$1250.

The landlord's testimony is as follows:

- The tenancy was specifically written and categorized as a *Room Rental Agreement* so as to accommodate the landlord's need for shared accommodations when not travelling in relation to her employment.
- The tenant never had exclusive right to the suite.
- The landlord utilized the sofa bed in the living room when in the suite, and some of her clothing was contained near the sofa bed, along with some bed linen.
- Another room renter used the suite under the same conditions as the applicant
- Since the tenant moved in the landlord testified that she slept in the suite on at least three (3) occasions when not travelling for the purposes of her employment.
- The landlord testified she carefully crafted the Room Rental Agreement to ensure it did not give the tenant exclusive use of the suite as this was contrary to the Strata by-laws, and that she would also be making some use of the suite as necessary.
- The landlord pointed out that the Agreement with the tenant was stated as a Room Rental Agreement, and that it includes 1 bedroom, 1 bathroom and common access to the kitchen, living room and dining room, and excludes the second bedroom in the suite. The tenant also was given access to a parking stall in the residential property.
- Shortly after the tenant moved in, another tenant rented the second bedroom in the suite.

- The landlord argues that the tenancy was clearly stated that the suite would be shared with the owner.
- The landlord argues that the DRO does not have jurisdiction in this matter.
- The incidents in December 2009 described by the tenant were the result of her, as landlord and owner, claiming her right to be in the suite according to the Room Rental Agreement and understanding of her sharing of the suite with the tenant – and given that the Room Rental Agreement provided for her to terminate the agreement, “in accordance with Provincial Law” and take possession of the suite.

Analysis

The testimony in this matter contrasts considerably. The understanding of the terms in the Room Rental Agreement contrast considerably. The Agreement is ambiguous. Despite the Agreement’s length and wordiness it lacks clarity as to *with whom* the tenant of *the Room* shares common access to the living room, dining room and kitchen.

On the preponderance of the evidence before me and on the balance of probabilities I prefer the tenant’s testimony and evidence. I find the Room Rental Agreement is a tenancy agreement for 1 room and 1 bedroom and common access. **I find** no reference in the Agreement that common access of the kitchen was to be with the landlord and owner. I am guided by the testimony of both parties in **finding** the suite was rented to 2 separate renters who shared the common facilities of the suite.

As a result, **I find** I have jurisdiction to determine the tenant’s application, and find the tenant is entitled to compensation for breach of the tenant’s right of quiet enjoyment of the rental unit by the landlord’s unreasonable and high-handed conduct in denying this fundamental right of the tenant.

I grant the tenant compensation for loss of tenant’s right to quiet enjoyment in the amount of **\$1200**. The parties are reminded that the tenant’s security deposit is to be administered in accordance with section 38 of the Residential Tenancy Act. If necessary, both parties have recourse under the Act in respect to the administration of the security deposit. The balance of the tenant’s claim is hereby **dismissed** . As the tenant’s application has merit the tenant is entitled to recovery of the filing fee of \$50, for a total entitlement of **\$1250**.

Conclusion

I grant the tenant an order under Section 67 of the Act for **\$1250**. The tenant is being given this order. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 28, 2010
